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# TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF ILLINOIS

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PETITION FOR CERTIORARI FILED JUNE 29, 1944.

CERTIORARI GRANTED DECEMBER 11, 1944.

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[fol. a] **UNITED STATES OF AMERICA**

STATE OF ILLINOIS,  
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the tenth day of May in the year of our Lord, one thousand nine hundred and forty-three, within and for the State of Illinois.

Present: Clyde E. Stone, Chief Justice; Justice Francis S. Wilson, Justice Loren E. Murphy, Justice William J. Fulton, Justice Walter T. Gunn, Justice June C. Smith, Justice Charles H. Thompson; George F. Barrett, Attorney General; Warren C. Murray, Marshal.

Attest: Edward F. Cullinane, Clerk, pro tempore.

Be It Remembered, that, to-wit, on the 2nd day of August, 1943, the same being in vacation after the term of Court aforesaid, there was filed in said Court a Petition for an Order upon the Committee on Character and Fitness for the Third Appellate District to Certify Petitioner for Admission to the Bar of Illinois, and for an Order for Admission to the Practice of Law in the State of Illinois, in a cause entitled Non Record No. 462 In Re: Clyde Wilson Summers which said Petition is in the words and figures following, to-wit:

[fol. 1] IN THE SUPREME COURT OF ILLINOIS, JUNE TERM,  
A. D. 1943

CLYDE WILSON SUMMERS, Petitioner,

vs.

COMMITTEE ON CHARACTER AND FITNESS FOR THIRD APPELLATE  
DISTRICT, Respondent

Petition from the Refusal of the Committee on Character and Fitness to Sign a Eavorable Certificate for Admission to the Bar

PETITION FOR AN ORDER UPON THE COMMITTEE ON CHARACTER AND FITNESS FOR THE THIRD APPELLATE DISTRICT TO CERTIFY PETITIONER FOR ADMISSION TO THE BAR OF ILLINOIS, AND FOR AN ORDER FOR ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF ILLINOIS—Filed August 2, 1943

To the Honorable Justices of the Supreme Court of Illinois:  
Your petitioner, Clyde Wilson Summers, pursuant to the rules of this Court, prays that an Order may be entered

upon the Committee on Character and Fitness for the Third Appellate District of Illinois that petitioner be certified for admission to the Bar of Illinois. He further prays that an Order may be entered by this Court admitting petitioner to the practice of law in the State of Illinois.

### Statement of the Case

Petitioner was in the month of June, 1942 a resident of the State of Illinois and of the County of Scott, which is located in the Third Appellate District of this state. Petitioner completed the required course of study of law and [fol. 2] was granted a degree from the College of Law of the University of Illinois at Champaign-Urbana. Upon payment of the required fee, petitioner was admitted and participated in the bar examination held under the supervision of the Board of Law Examiners of the State of Illinois in the month of June, 1942. Petitioner was informed by said Law Examiners that he received a passing grade; and thereupon on August 5, 1942 he filed his application together with the required affidavits for admission to the Bar of the State of Illinois.

Said Affidavits accompanying said application,—certified to by persons of standing,—stated that petitioner was of good moral character; that he was a fit person to practice law, as it will more fully appear from said affidavits heretofore filed with one Walter Bellatti, a member of the Committee on Character and Fitness for the Third Appellate District, (hereinafter referred to as the Committee).

At the time of the filing of said application for admission and affidavits, said Bellatti questioned applicant's fitness to practice law on the ground that applicant registered and has been classified as a conscientious objector to war, which registration and classification was in accordance with the *Selective Training and Service Act of 1940*, 54 Stat. 885, Sec. 5 (G; 50 U. S. C. A. 305(G) 1942 Supp.) Said Bellatti as a member of the Committee failed to pass upon petitioner's admissibility to practice law because of petitioner's claim to be a conscientious objector to war. Later, however, petitioner was given an opportunity on November 27, 1942 to appear before the full Committee (with the exception of one Stealy). The three members of the Committee present, that is the said Bellatti, one Garman and one Vail questioned petitioner concerning his religious beliefs and training, and particularly as to the thought processes

which led petitioner to become and to be a conscientious objector to war. The questions directed to petitioner and [fol. 3] his answers to said questions are contained in the Record (pages 1-63 thereof) which Record is attached hereto and as Record Exhibit A is made part of this Petition.

Upon the conclusion of the hearing, the three members of the Committee in the absence of the petitioner took the matter under advisement, and having failed to come to a conclusion as to petitioner's fitness to practice law, the said members decided that the Record of the hearing be submitted to the fourth member of the Committee, and upon such fourth member having read the transcript of record, a report be made and petitioner informed accordingly (Rec. p. 63).

On January 5, 1943 petitioner was informed that "now a majority of the Committee on Character and Fitness has declined to sign a favorable certificate as to your character and fitness for admission to the Bar" and petitioner was further informed that "in the absence of a certificate from our Committee to the Board of Bar Examiners, that Board will not certify you to the Supreme Court for admission to the Bar" which information is contained in Exhibit B hereto attached and made part of this Petition.

As Exhibit B discloses, no findings of the Committee in support of its decision were given. Petitioner attempted to obtain a reconsideration of the Committee's decision, but he was unsuccessful. He was also unsuccessful in obtaining an official statement as to the reasons for the findings of the Committee. However, one member of the Committee, who is also Secretary of the State Board of Law Examiners, expressed his personal opinion as to the reasons for the Committee's decision. This letter, which the petitioner publishes with acknowledgment of the graciousness of the writer thereof, is submitted for the purpose that this Court may have before it a statement as to the Committee's reasoning. The letter of the Secretary of the State Board of Law Examiners is hereto attached as Exhibit C and petitioner's answer thereto as Exhibit C', and both are made part of this Petition. Said letter, Exhibit C, sets forth among others that:

"The record establishes that you (petitioner) are a conscientious objector—also that your philosophical

beliefs go further. You eschew the use of force regardless of circumstances, but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

"Your conduct is governed by a higher law which we all hope may some day prevail. In the meantime most of us think chaos would prevail and civilization might be destroyed if the wolves are not kept at bay. Lawyers have the job of aiding in the administration and enforcement of the law,—all the law. What protection can the law be to the weak if lawyers do not consider its mandates to be entitled to obedience by force if necessary? Can a man conscientiously take an oath to support the Constitution and the laws, at the same time reserving the use of force from the meaning of "support".

"I do not argue against your religious beliefs or your philosophy of non-violence. My point is merely that your position seems inconsistent with the obligation of an attorney at law."

Said Exhibit C also acknowledged the receipt by the Committee of certain affidavits signed by various persons in support of petitioner's contention that he is morally fit and that therefore he ought to be certified and admitted to the practice of law in the State of Illinois.

Said affidavits are hereto attached as Exhibit D (Affidavit of Dean Harpo of the University of Illinois, College of Law); Exhibit E (Affidavit of Dean Fornoff of the University of Toledo, College of Law); Exhibit F (Affidavit of Harold R. Clark, Lieutenant of the United States armed forces, at the present in North Africa); Exhibit G (Affidavit of Reverend Paul Burt, Minister of Trinity Methodist Church and Director of Wesley Foundation of the University of Illinois); Exhibit H (Affidavit of Max T. Foster, Sergeant of the United States Army), and Exhibit I (Affidavit of DeDand A. Shinneman, President of Wesman and member of the United States Naval Reserves.)



Said affidavits D to I both inclusive are made part of this Petition.

Petitioner at this time refers to the transcript of record, which by itself discloses that the Committee based its decision on nothing but questions directed to and the answers given by petitioner concerning his religious beliefs and training, and concerning his being a conscientious objector to war.

As the record discloses, petitioner is twenty-four years of age, was born in Grass Range, Montana, where he lived for about three years, wherefrom he, with his family, moved to Nebraska, and that he was continuously a resident of the State of Illinois, County of Scott since 1929. (Rec. p. 2) He attended the University of Illinois, having received a Bachelor of Science in Accounting, and then entered upon the study of law. (Rec. p. 3) Petitioner is affiliated with the Methodist Church. While at the University of Illinois he did special religious work. Among others, he was with the Wesley Foundation as chairman of religious education, chairman of the Worship Committee, and President and Vice-President of the Council, and also a Student Assistant for the Minister (Rec. p. 3).

While at school petitioner led worship services. Petitioner worked his way through college and law school, the first four years at school worked on so-called meal jobs, then washing windows, running elevators, etc. (Rec. p. 3, 4) During the last three years in law school he worked in the University Accounting Office, two years in the University Accounting Office and one year in the Wesley Foundation. (Rec. p. 4) Petitioner's father is a farmer, and has one brother who is in the military service as a First Lieutenant in the Coast Artillery (Rec. p. 4).

Petitioner is not married, and registered in the first draft, having returned his question-aire stating that he is a conscientious objector to war and has maintained that position [fol. 6] ever since. The Draft Board classified him as a conscientious objector without ever questioning petitioner. (Rec. p. 4) This classification is 4-E. He took his physical examination, which he failed to pass, and in consequence he did not have to report to a conscientious objector camp (Rec. p. 5).

The Methodist Church, to which petitioner belongs, in its national conference declared that it would support the conscientious objector as well as conscientious participants in



the war. The church did not state that it is one of the fundamental tenets of religion, to take the position of conscientious objector, such as is the case of the Society of Friends (Rec. p 6).

Petitioner's position as to his conscientious objections to war is the result of his reasoning through religious training. The two cannot be separated. He did his own thinking, but in addition thereto had the religious influence, and his conscience is based on a religious point of view. It is not the result of family thinking (Rec. p 6). Petitioner does not believe that it is the duty of a just government to defend his life and property by military force. Even though it is the duty of the government to defend life and property, the petitioner sees no necessity to do so by armed force (Rec. p 7). He admits that Congress afforded him the right to claim an exemption or deferment on the ground of his conscientious objections to war. Congress protected his right even in the present great emergency. He believes that that kind of government is worth defending, but he questions whether defending it by force is a good defense, or the best kind of defense (Rec. p 7, 8).

Petitioner believes that if the civilization of the United States were overthrown and the Japanese or Hitler's ideas substituted therefor, the occurrence would hurt God greatly but he also believes that God is hurt greatly by people being killed. He does not believe that God desires that we should produce and use arms to prevent the overthrow of our civilization by the Japanese or by Hitler. God would [fol. 7] approve our failure to use arms if we used other means which we have available to defend our civilization. God does not approve anybody surrendering or giving in, but his approval is contingent on the means which we are using in our defense. The means which he believes are approved by God are non-violent resistance or non-cooperation, or using love to overcome evil. The best example of the latter one, according to petitioner's answer to the Committee members, is Ghandi (Rec. p 8). He does not believe, however, that such non-violent forces could prevent the initial overthrow, but he believes that such men would win in the end.

Petitioner does not believe in any force that requires the taking of human lives. He believes that even though our national existence initially would be injured by the triumph of our enemies, force and taking of human lives should not

be resorted to. He also believes that the period of darkness would disappear much quicker by using non-violence than the period of darkness existing during and following the use of force and taking of human lives (Rec. p. 9). Petitioner agrees with the Committee members that in case our enemies should be victorious, our liberties would be taken away as it was taken away in Germany, in Czechoslovakia and in Poland, but our people would be enslaved only to the extent that they allowed themselves to be enslaved. They can prevent from being enslaved otherwise than by use of force by simply refusing to follow the uncivilized forces, because the enslavement of people takes the form of the enslavement of the spirit and the willingness to put up with such enslavement, and does not come from the kind of enslavement we usually talk about by taking away one's liberties. As long as men are spiritually free they can never be slaves of anyone (Rec. 10).

Petitioner acknowledges that in case of such victory by our enemies his right to refuse to fight would be taken away [fol. 8] and he might suffer great consequences, in that he would have to suffer the violence exercised against him (Rec. p. 10). Petitioner believes that if everyone in the nation would have taken his position since Pearl Harbor his rights and freedom would be lost, but they would come back (Rec. p. 10).

Petitioner in his association at the University of Illinois made many acquaintances, many of them his best friends are now fighting with the armed forces, probably in Africa. His conscience does not make him feel that he ought to be fighting side by side with them. In case he were to be asked by his friends to fight with them he would continue what he thought was right (Rec. p. 10, 11). Petitioner's best friend, who may be in Africa, is Harold Clark. He graduated in law a year before petitioner. If this friend would ask him to join in the fight petitioner would continue doing what he is doing now as nearly as he is able to do it. If in his presence one of his friends were to be attacked by a superior foe, petitioner would be willing to take the blows that were meant for his friend. He would put himself between his friend and the foe. That effort, petitioner considers, is all that he could do. If it would be practical to take away the gun from the foe petitioner would do that, in which case he would be using restraint and not destruction. If in the struggle to get the gun or protect

a friend the point would be reached where it became a question of the life of the petitioner and of his friend or that of the foe, he would be willing to sacrifice his own life (Rec. p. 11, 12). Thereupon Committee Member Garman asked the following questions:

Q. And your friend's life too rather than take the life of the foe?

A. Yes. But what has that to do with practicing law?

Mr. Vail: You are here to answer questions. Not to ask them.

Mr. Garman: Well, let us talk about law a little bit.

Q. In the practice of law it sometimes becomes necessary to use force, doesn't it?

[fol. 9] A. That is a police force—not military force.

Q. What is the difference between them?

A. One is bent on restraining people and prevention, and the other is bent upon destruction. One is bent on restraining violence, saving people who have committed crime and not to kill them off.

Q. Sometimes in the enforcement of the law, a mob attacks a jail, doesn't it?

A. Yes.

Q. Now call it police power or military power, whatever you will, it is the duty of the jailer to protect the prisoners, isn't it?

A. Yes, it is.

Q. Isn't it his duty to protect them even though he must injure some of the people who are bent on the attack?

A. Yes, he has assumed that duty.

Q. That is a part of our system, isn't it?

A. A part of our feeling, yes.

Q. A part of our system of law, isn't it?

A. Yes.

Q. Now, that is the system of law that you wish and are willing to take an oath to support, isn't it?

A. Yes.

Q. And you recognize the fact that sometimes it is incumbent upon us in the administration of that law to use force and sometimes to take life? Don't you know that? And as a citizen of this country that you can be

called upon to assume police power, even involuntarily, under certain conditions?

A. Yes.

Q. And isn't it a part of our system that you should do so?

A. Yes, sir. It does not necessarily mean to kill a man.

Q. It might.

A. I would go as far as I could, but when it came to killing a man I could not do it.

Q. You would let the men rush the jail and take the prisoner out and hang him rather than do it.

A. They would have to hang me first.

[fol. 10] "Q. It is not necessary to kill you. The man is in jail.

A. It would be as the old saying is, "over my dead body."

Q. He ties you, walks past you, takes the keys and takes the prisoner out and hangs him. You would go Scott Free?

A. Yes.

Q. Well, that is so obvious, Mr. Summers.

A. But it would be a case of keeping myself in a position where they could not do it. It would be a case of my own life, it would be a case of throwing the keys away or whatever is necessary. Of course, then, there are spiritual forces. Again love. Some of the missionaries in China have proved them against the Japanese. They have been able to stand for every violence and fighting back there. (Rec. 12, 13, 14)

Petitioner, in talking about combating a foe, had in mind the method of non-violent resistance. That means that when one opposes a certain thing, be it force or otherwise, one refuses to cooperate. To hold one's self ready to correct it, assuming the blame for which one is responsible, refusing to hate those who are using force against one, and in refusing to hate, the method become effective. (Rec. p. 17) Under the present conditions, petitioner would suggest to do what he is doing, standing for his principles, even though the rest of the people are not willing to go along. Various people are now going along—knowing no other way they must fight. If it be assumed that the whole country believed as petitioner does, it would be a case of not relying on the



military. Rather it would be the case of making the food of the country available to the hungry. It would be the case of bearing the responsibility for the creation of this war, and willingness to assume that responsibility and correct the conditions to what one think they ought to be. Such methods amount to resistance, the most forceful kind of resistance, to any forces that are against us. And in that way the present conditions could be corrected. It would [fol. 11] be using spiritual force against our foe. It would be using prayer, love, good-will and friendship regardless of how the other man treated you. Petitioner would use this non-violent resistance even though that might disintegrate the whole nation to the last man, but he does not believe that it would.

These are the petitioner's own ideas and not the teachings of his church, though there are a large number in his church that believe the same way that he does. His church took both sides, but it is the teaching of Methodists like Earnest Fremont Tittle. There are many things the Methodist Church stands for that are not in the creed. They stand for those things which as a unit they adopt in their conferences every four years as their policy. His church never adopted a policy of non-resistance, but the conference said that such non-resistance is a valid method of the church. It didn't adopt it as a policy of the church but it didn't adopt a policy of war either. (Rec. p. 16-19) The Doctrines of the Church adopted in 1940 set forth:

"Believing in the long run that any people have far more to gain by cherishing freedom of conscience than by any regimentation that takes away freedom, and that conscientious objection to war is a natural outgrowth of Christian desire for peace on earth, we ask and claim exemption from all forms of military preparation or service for all conscientious objectors who may be members of the Methodist Church. Those of our members who as conscientious objectors seek exemption from military training in schools and colleges or from military service anywhere at any time, have the authority and support of their church. Section 1716, page 778."

Petitioner would not advocate against the foe such methods as a food blockade. He rather would feed the hungry

people of the foe; he would feed them even though they might be in the army.

Questions by Committee Member Garman:

“Q. We know today that the German people are badly underfed.

A. Not as badly as the rest of Europe.

Q. Just answer my question, Mr. Summers. We will get along much faster I really imagine.

[fol. 12] A. I can already feel like you are trying to force me into a hole without a full statement of what the conditions are.

Q. No, you have an opportunity to state everything you want to state, but we would like to know.

A. Very well. I will save it until then. I just wanted to know and be sure my position is clear, that I am not put in a hole.

Q. The point is, you would feed the German people, including the German Army?

A. Yes, sir.

Q. The Japanese as well?

A. Yes, sir.

Q. And your theory being that if you feed them they might relent and lay down their arms and be Brothers?

A. Eventually yes. That with other things I mean. Feeding alone is not enough.” (Rec. p. 20)

Petitioner knows that the legal system now in force in Germany is different from our own, and he considers it very bad. He would not submit to it, but he would not use violence.

“Q. You would not use violence to protect the legal system you have?

A. No, sir.

Q. You do not feel that the Common Law under which we live is worth defending by force?

A. It is worth defending by force, but the force will not work.

Q. That is it won't work over a long period of time?

A. It is worth everything we can give.

Q. It won't work you think over a long period of time?

A. That is right.



Q. We might defeat our foes and preserve our system, but that would not be worth while?

A. Not if it meant losing—it would not be worth while because it would mean losing them eventually or injuring them again eventually.” (Rec. p. 21)

[fol. 13] Petitioner stated that he is willing to follow the course outlined by him in answering the questions of the Committee members, and he is willing to do so regardless of the consequences.

Q. A very substantial number of lawyers you know, lawyers and law teachers, are today actively fighting. They fight to protect and to preserve our way of life?

A. Yes.

Q. And our institutions in this country?

A. Yes.

Q. They have sacrificed their jobs and their property to do that. Now, is it selfish or not for a man who refuses to fight to step into the place of those who has gone to fight.

A. I am getting two hundred dollars a month. I am saving one hundred dollars of it in order to pay my expenses when I go to Camp. I do not think that is being too selfish.

Q. It is a little bit selfish, isn't it.

A. I have no other choice than to go to Camp, and then I would be a burden on those behind me. I have no other source except to support myself. (Rec. pp. 22, 23.)

Petitioner has read a great deal on the question of pacifism, including Gregg's "Power of Non-violence" and Macgregor's "New Testament Basis of Pacifism", Fellowship magazines put out by the Fellowship of Reconciliation, a number of articles in the "Christian Century", and Kirby Page's Books. He has read practically everything he could get his hands on. All writers of the books mentioned by petitioner advocate non-violence. That was the thesis of Kirby Page, but petitioner does not know whether or not it is his thesis today. If he were to be informed that Page changed his position, that would not make any difference to petitioner as far as his approach to war is concerned. If all the authors were to change their position in the light of the present conditions, petitioner would certainly look into

his own position, but he could not say with what result. Whenever an issue came up, petitioner looked at it and examined it as much as he could to determine whether or [fol. 14] not he was right or wrong on that point. Petitioner does not resolve his doubts in favor of non-violence, but non-violence overcomes all doubts. He admits that he may be wrong, but it is the best as he sees it now. Six months before he took his position he thought that war was thoroughly justified. Before he changed his position he did not go to church regularly. When he started to go to church regularly it helped bring about the change because it made him think. In the second place he went home in the summer time and had lots of time to think. He read the Four Gospels probably a little too much. He was just compelled to come to his present conclusion. He had no other choice. (Rec. p. 25) He believed that the New Testament is enough authority, because there are parts therein like "Love your enemies," "Do good to those that hate you", "Even though your enemy strike you on your right cheek, turn to him your left cheek also", which are convincing in themselves. Last but not least the example of the Man that died on the Cross because he refused to use force was a compelling argument. There are a few things in the New Testament that caused petitioner some doubts. One of them is Jesus using cords on cattle and driving them out of the temple. Such things bothered him but they were totally overcome by his new way to live, because he read and investigated, and found firstly that the incident is not particularly reliable as reported, and that secondly Jesus used the cords on cattle. Thirdly it was a perfect example of non-violence because Jesus as one person stood against a whole mob and the mob obeyed. Jesus did not drive the money changers out of the temple. He drove the cattle out. That is as far as he would go. While petitioner cannot quote the Bible exactly, the Greek translation says that Jesus used the cords on the cattle and since the incident is reported only in the Gospel of John and does not appear in any of the other three, it is a question as to whether Jesus really did it. It says that "He cast them out", but [fol. 15] in Greek translation that means "He cast them forth." Petitioner did not ignore the Old Testament entirely. It is a history of a people learning to know their God. It is a history of their growth and knowledge of what is right and wrong. And Jesus was the fulfillment of that.

(Rec. p. 27) Jesus was the fulfillment of that struggle that these people went through, even sometimes resulting in the engagement of violent war, but when Jesus came He said not to do it that way. He said, "You have heard that old time saying, an eye for an eye and a tooth for a tooth, but I say a man who is angry with his Brother is in danger of Hell fire." (Rec. p. 28)

Petitioner rejects the reports and teachings of the Old Testament which would support violence in the sense that it is not the best life a man could have. It was what those men believed to be right at that time. (Rec. p. 28)

Questions by Mr. Vail:

Q. Now if it were suggested by the Board, the Draft Board, that since you are a conscientious objector, you go into the Hospital Service and not carry any arms, but help carry the wounded men off the field, help care for them, would you willingly do that?

A. As long as I was not subject to the military authorities. The Quakers are doing that kind of work, are trying to, if the Government would let them. I would be perfectly willing to do it under them.

Q. What is your objection to doing it under the military authorities, if you do not have to fight?

A. I think the whole military system is wrong. I would prefer not to have a part in it.

Q. You would be unwilling then, under military authority, where you did not have to bear arms, to help carry the wounded off and serve in the hospitals?

A. I am afraid so, but it is not because I do not feel for those people.

Q. Why would it be? You do not want to do it?

A. Because I do not want to do it under military authority . . . which is a machine aimed at the destruction of other people.

[fol. 16] Q. You are willing to refuse to save life because somebody may correct you with somebody that takes life?

A. There are other ways of saving.

Q. Answer my question.

A. I do not mean foregoing the saving of life, but I do not want to be a part of something that is the cause of destruction.

Q. Suppose you were married and walked down the street and some bully came and started to beat up on your wife, what would you do?

A. Take the punishment myself.

Q. He jumped on her, what would you do? Interfere?

A. Put myself between them.

Q. Is that all you would do?

A. I would do that, that is the most I could do.

Q. That is the most you could do?

A. I could absorb all of the punishment myself and that is enough.

Q. You would let your wife take what violence came to her when you could prevent it?

A. She could get away while he was beating me up.

Q. Suppose you had a child and a wife and some fellow came around your house with a revolver and threatened to shoot. What would you do? Just stand in the way and be shot?

A. That would be one way.

Q. Would you do that?

A. Certainly.

Q. —

Q. If you had a brick in your hand, do you think you would throw it at him?

A. I do not think Jesus would want me to do that.

Q. I did not ask you about Jesus. I am talking about you.

A. I would try not to do it.

Q. You would let him shoot your wife rather than throw the brick to save your wife and your child? You would let him shoot your wife and your child rather than throw the brick?

A. Yes, because I believe that is what Jesus asks for me to do.

[fol. 17] Q. Do you know you would be an officer of the Court if you were admitted to the bar?

A. Yes, sir.

Q. Suppose you were appointed to defend someone who is indicted for murder?

A. I would defend him.

Q. And his defense was self-defense, even though he was a man—

A. I would have no duty but to say that is what the law provided. I would defend him as the law provides.

Q. You would do that even though you did not believe it?

A. Certainly" (Rec. p. 30-32).

Petitioner was reading the work of the writers concerning non-violence and pacifism nearly four and one-half years. He read book on the opposite side too. He read the book "Moral Man, Immoral Society" by Rheinhold Niehbur.

Q. He is a communist?

A. No, he is a minister.

Q. Didn't you know he was a communist?

A. I never heard of it—not Niehbur.

Q. Did you read any of his books on Russia?

A. No sir, I have not.

Q. Do you know whether he wrote about Russia or not?

A. I do not know of anything if he did.

Q. Do you believe in Hell?

A. Can a man help but believe in what is going on" (Rec. p. 33).

Petitioner read books on evolution, he studied Darwin and Huxley. He read about other religions than the Christian. He believes, in so far as he is able to understand it, implicitly in the New Testament. He read the Four Gospels and he knows there are a lot of variances and differences. He read the St. James version and the versions of Goodspeed, Moffat and Weymouth. He also read about Confucianism, Hinduism, Mohammedanism and Hebrew (Rec. p. 35).

[fol. 18] Petitioner cannot separate the picture of Jesus as a whole, the things that he said, and what he meant by His way of life from that of the doctrines of the New Testament in relying and accepting a document for his belief in non-resistance. He believes in the survival of the fittest, but the fittest are not those who are physically fit, but those who are spiritually fit. They never die. Jesus taught that idea too.

Petitioner, as he stated, does not believe in physical survival after death, but he thinks that people that do good, the good lives after them. The greatest example of non-resistance is Christ, and He is the Man that survived the



longest. He is still alive in thousands of Churches, that is what petitioner meant by survival, that He lives in the hearts of men. Christ in two thousand years had influenced men, and in the sense that He still works, and that He still lives, is what he understands as life after death (Rec. p. 36; 37).

At Champaign the Wesley Foundation sent out some extension teams to churches in the state. Petitioner preached at Kansas; Illinois, and in other little towns close by there. He preached in Peoria and he preached at home in his own church the day war was declared. Two summers he spent with a group in New York. It was an inter-religion, inter-faith and inter-racial group and the participants were sent out to churches every week to preach. Petitioner spoke fifteen or twenty sermons in different regions and churches during the two summers. Some of the subjects of his sermons were "World Brotherhood", "World Minded", "The Meaning of Nations", "The Purpose of Christ in the Lives of Young People". Some of his sermons touched on non-resistance. As a matter of fact he remembers only one sermon specifically on the subject. Questions by Mr. Vail:

Q. Mr. Summers, is there any question in your mind as to whether you were cut out for a preacher or music teacher rather than a lawyer?

A. Sometimes I very seriously consider going into the ministry. The fact is I considered it through most of two years of my schooling.

[fol. 19] Q. Why did you change your mind?

A. Because I felt there were enough religious people in the churches—I mean the ministry. I think there is a lot of work to be done in the law.

Q. Do you expect to use the law as a vehicle for the extension of your ideas?

A. That is not my purpose in law, just as a means of getting at these things, but when the situation has come up in law that my principles guide me, I will follow them, whether it is in relation to non-violence or not. There is a lot of religion other than non-violence. I think there is work that needs to be done. A lot of prison reform that needs to be done. I think it is unChristian the kind of prisons we have. I think there are a lot of other things that perhaps the law has a place to do.



I think the law has a place to see to it that every man has a chance to eat and a chance to live equally. I think the law has a place where people can go and get justice done for themselves without paying too much, for the bulk of the people that are too poor. I have been particularly interested in the legal clinics that have been set up in different places. In fact, I do not know too much about it. It is in the right direction.

I think in law if I did not do anything else I might get a few more people to settle things without going to Court just to get together as friends, because my experience has been when people . . . start suing each other in Court they are mad at each other and do not understand each other and have not made an honest effort to get together . . . I have something to offer in that because I believe in settling it peacefully and settling it on terms of friendship and understanding rather than going through court. If there is no other way to obtain justice, and that is what the courts are for, but it seems to me that the lawyer's main job or one of the main jobs is to try to get people to work things out peacefully and nice. That antagonism must necessarily grow out of a law suit, and you know it better than I do, but people feel madder after a lawsuit than they did before the lawsuit. Lawsuits do not bring love and brotherliness, they just create antagonism.

Q. Would it be your effort to eliminate all litigation possible if you were admitted to the Bar?

A. All that is possible to do without sacrificing the client's interest. A man cannot do that. I mean he is intrusted with that. Of course, a man cannot play two sides of the fence. He cannot act as attorney for both parties. I know that. And yet if there is an opportunity to get both lawyers together and the parties together and sit down and talk it over and settle it peacefully, he should do that.

[fol. 20] Q. Suppose you had a client that asked you to represent him, to become his advocate, and his ideas of what he was entitled to and yours did not correspond. He wanted to go ahead in a claim within his legal rights. What would you do?

A. If it was a criminal case, of course I would be bound to take it and get as much justice as I could \* \* \*. If it was a civil suit, and if the conflict were not too great, I think I would just tell him that my own personal feelings just made it impossible for me to do a fair job to represent his claims. I think perhaps that is about as good as I could do." (Rec. pp. 38-40)

Questions by Mr. Bellatti:

\* "Q. About the distinction you made about the compulsion and without force in connection with the administration of justice, aren't you just as connected with the law, in their law enforcement agency, by being a member of the Bar as you would be connected with the military forces if you were in the hospital service, even under military direction?

A. Just as much? I mean the relationship is just the same, but the difference it seems to me lies in this: That the object of the police force is to restrain and reclaim people, and that is not the object of the military force.

Q. Could not the effort of the military authorities be used to restrain our enemies even if they have to kill them?

A. There is certainly no effort to reclaim them \* \* \*. I mean to try to make them decent people again, and it seems to me another distinction when you are dealing with criminals, you are dealing with somebody as an individual. At least to a certain extent they have been responsible for where they are, but there are a lot of boys that are fighting for the Germans, the Italians and the Japanese that do not want to fight any more than we do. They do not want to kill us any more than we want to kill them. They do it because they think they have to.

Q. But a police power may be required to kill people in order to restrain them?

A. I do not know whether it is done or not. It is done but insofar as it does, it fails to live up to the highest ideals.

Q. And yet you would not object to being connected with the administration of justice where that is frequently done?

A. I am not connected quite in the same way." (Rec. pp. 42, 43)

Petitioner believes that it is necessary to have organized government, but he does not believe that the government [fol. 21] should support itself by military force. Organized government in the face of a foe should offer resistance, but not military violent resistance. Individuals themselves should not offer violent resistance. If an invasion occurred within the confines of a territory controlled by an organized government, people would do wrong to resist such invasion with force. They would be bound to resist, but it would be non-violent resistance by prayer and by good will and by absorbing the punishment. There is no choice there. In case of invasion of our country we would all be under the obligation to put ourselves in the service to help in the non-violent resistance. He believes that would work. (Rec. pp. 43, 44)

The Minister of the Methodist Church at Urbana is Paul Burt. Petitioner talked to him about the question of non-resistance. He is sympathetic to his point of view. Petitioner counselled with other people on the subject, as for instance with Roy Hendricks, a student assistant at Wesley, about 26 years of age. In June, 1941 he consulted with Harold Fey, a pacifist and a believer in non-resistance, and the editor of the Christian Century. He talked to Kirby Page once in 1938 and once in June, 1939 and once in the spring of 1941, but not since the war was declared in this country. Since the declaration of war he talked to Reverend Burt. There are dozens of people whom petitioner heard make speeches on the subject but he did not ask them questions. He talked in 1939 to A. J. Musty, who is the head of the Fellowship of Reconciliation. The Fellowship of Reconciliation is a Christian Pacifist Organization. Petitioner also talked to DeWitt Baldwin. He was the one who was in charge of the group petitioner was with in New York, and is Student Secretary of the Methodist Board of Missions. Petitioner was with the group in New York called the Lisle Fellowship, that is an inter-racial and inter-faith organization mainly supported by the Methodist Board of Missions. The group as a whole does not believe in non-resistance, it was split up half and half (Rec. p. 47).

[fol. 22] Petitioner also talked to people who did not share his views on non-resistance for the purpose of obtaining

their advice. He talked to Colonel Brown of the University R.O.T.C. in the fall of 1938. He talked to him two or three times. Petitioner had two years of basic military training in the R.O.T.C. At the time he took this course he did not believe in non-resistance, but changed his mind after he was out of military. If he would have felt as he does now he wouldn't have participated in the R.O.T.C. Petitioner talked to Colonel Brown to get his view-point on the values of the R.O.T.C., its purpose, and objectives, how much they were doing, and how much it cost, and he gave material to petitioner on that. Colonel Brown knew petitioner's position. Petitioner's Dad talked to him a lot about this problem, and definitely disagrees with petitioner. He also talked to Henry Wilson, the General Secretary of the Y.M.C.A., while working on inter-religious things. He also talked to John Bennett. While talking to these people both sides were listening fair mindedly, but the petitioner states that he made up his mind when nobody was around, but he feels that he has talked with enough people and he has adequate information on which to base his conclusions.

Questions by Mr. Garman:

"Q. And it is your opinion that an oath to support the Constitution of the United States would not oblige you to use any force at any time?

A. Military violent force.

Q. Or police force or individual physical force?

A. Yes.

Q. I cannot understand the distinction between military force and other force.

A. In the military you kill innocent people and in the other case you get the criminal" (Rec. p. 49).

Petitioner distinguishes between raiders who may come across the border of Texas to raid the farmer's cattle and those who raided Pearl Harbor. Petitioner thinks that [fol. 23] the first are criminals and others are not. Those who are criminals do things of their own volition, but the Japanese soldiers did what they were ordered to do. The soldiers did the work because they thought they had to, for the same reason that a lot of boys are in the Army now, not because they believe in it but because they have to. They feel that it is expected of them and they do not see any other way (Rec. p. 50).

Questions by Mr. Bellatti:

Q. Now his choice to go into the Army you think makes him a criminal?

A. No, no, a thousand times no. These people that are fighting are not criminals.

Q. He is going to kill people.

A. He is helpless in it.

Q. No, he is not. You just stated he has some freedom to choose.

A. He has to regardless. You are twisting my words. I do not think boys in the Army are criminals. They are a decent bunch of fellows, doing what they think is right. That is what I am trying to do. They are decent guys and they do not want to kill people either.

Q. Now let's get down to brass tacks. They kill people?

A. But we are all the ones that send them to kill them.

Q. We all send them, you and all of us?

A. Yes.

Q. So as a part of organized government we send them out to kill?

A. Yes, and we are all guilty.

Q. And we are going to reap the benefit of their victory, aren't we?

A. If there are benefits.

Q. And we will label them as transgressors against the will of God, but we will accept the benefits of their transgressions, won't we?

A. What Jesus said about lawyers in his day. He says "You strain on the gnat and swallow a camel." But these boys—can't—you see they are decent—they are doing the best they know and they are going it because they see it for them. It is the only thing they can do. I do not think God is going to be very hard on them" (Rec. p. 50, 51):

[fol. 24] The University of Toledo authorities for whom petitioner is teaching know that he is a conscientious objector. They knew it before they hired him. To obtain the teaching position it was not necessary for petitioner to



be admitted to the practice of law. So far as he knows he could go on teaching without being admitted to practice.

Questions by Mr. Vail:

“Q. Suppose, Mr. Summers, that the law your being exempted as a conscientious objector, were repealed by Congress, so that there were not exceptions made, what would you do?

A. The first situation is the situation that has been presented to me. I do not know for sure what my reactions would be, because I had a certain kind of reaction to the First Draft that I did not understand, that I did not expect, so I do not know what I would do in that case, but so far as I see now, I simply could only say, I am willing to do constructive work, but I would not be a part of the Army. I cannot help what the consequences were any more than if Congress passed a law that every man was compelled to kill his neighbor's dog. I would not obey that law. And if the Government insisted, I would take the consequence. I would rather trust in the Sermon on the Mount” (Rec. p 52, 53).

Petitioner would rather do what he believes is right than do what he is pretty certain is wrong. He would consent to being a prosecuting attorney, but he would not ask the death penalty in a murder case, even though the statute authorized him as it does not require it. If it would be the only way for a man for getting bread for himself and his family by garnishing his wages, petitioner would rather pay the judgment than to garnish his wages and take from him and his family the sustenance upon which they depend for life. If a man would fail to pay his rent there would be nothing else left for petitioner but to evict him from his home. But if there were no houses available and there would be no place for him to go, petitioner would not send him out to the street to freeze and starve. They would just have to go to another lawyer to do those things. Petitioner would assume the obligation to tell his clients that his conscience would not let him do those things. They would have to find some other lawyer who didn't feel the same way. [fol. 25] That would be far better than taking the case when petitioner thought it was wrong, because he is afraid that if



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he started to do something that was wrong he would not be as good a person as the petitioner thinks he should be. It would not be fair to his client.

Question by Mr. Garman:

“Q. Aren't these notions you express here rather difficult for a man to hold in practicing law?”

A. It is just a question to hold and live. In practicing law it is not harder than fighting for anything else as I see it” (Rec. p 54).

Petitioner talked to some lawyers about the practice of law and their methods of handling law suits and litigations of their clients. From the impression so obtained, petitioner does not believe that the legal profession as a whole is a monetized outfit. He does not believe that lawyers strive on litigation and trouble. He believes that the greater proportion of lawyers are doing the very best they can. He knows some lawyers that are just about as fine a people as he ever knew. He would not want to say that most of the lawyers do not share his own ideas, but he rather would say that the lawyers are not particularly motivated in practicing law by trying to achieve those ends, the ends petitioner wants to achieve. Most lawyers never do anything wrong. They do the right thing as they see it, but there is a difference between doing the right thing as you see it when it comes to you and attempting to build something new (Rec. p 55).

Petitioner didn't have any dates with girls the first three years at school for the reason that he didn't have the money and had less time. After that the last couple of years he had quite a number of dates. He bowls, plays baseball and softball. He played football until he got big enough and his Dad was afraid he was going to get hurt. His recreation in school was playing handball, boxing, tennis, swimming, running, fumbling and folk games. He didn't participate in group activities because he could not arrange the time, though he liked group activities. He can hold his own in boxing, but he would not use his fistic ability to preserve [fol. 26] order or decorum or prevent any harm or evil that might befall an innocent person. Since he adopted non-resistant position there were one or two cases when someone struck him. Other people threatened him but he didn't offer to fight. If they had struck him he would have taken it

or walked out as quickly as he could. He would stay out of the way of an aggressor until he cooled off. If he thought that was then just a flair of temper he would not run, but if it was a flair of temper he would go off, for the aggressor is generally sorry enough, and there is no use making him sore sorry. If an aggressor wanted to beat petitioner up he would let him do the beating (Rec. p 56, 57).

Questions by Mr. Vail:

Q. Mr. Summers, I do not think you would.

A. Maybe I would not, but if I did otherwise I would feel remorseful afterwards.

Q. Well, isn't it perfectly possible for us to use force righteously and feel sorry we have to do those things and ask for forgiveness for every blow that we dealt?

A. Well, there is a lot of good men that think so, and there are a lot of people even in churches, there are a lot of Methodists that feel that way about it, but I do not. I feel that God is going to look a little skeptical when we stab a man with our bayonet and then say, "Lord forgive us."

Q. Even though that man was about to stab you?

A. I am afraid so. Jesus said "Put up your sword." That is what He said. We never try to defend. Put up your sword else they will take you.

Q. He was trying to impress upon them a great moral teaching, wasn't He?

A. Yes, that I will do the best I can.

Q. And He was in a position to do that?

A. Yes. And Maybe I am." (Rec. p. 57, 58)

Petitioner about eleven years ago, together with his brother, had some wild grape wine his Dad didn't know anything about at that time. They had a couple of glasses before the wine spoiled. Outside of that petitioner never took a drink, but is a prohibitionist by practice. He does not smoke. He does not engage in social dancing, not because he doesn't believe in it, but he does not function that way. [fol. 27] He played poker just once while a freshman in college, but since that time he has not. He does not play bridge, never took the trouble to learn. He used to play checkers and chess. (Rec. p. 59)

Petitioner stated to the members of the Committee substantially as follows: He realizes that his position is from

a religious standpoint on which a lot of people have differences of opinion. He would not anymore want to ask them to do his bidding when he believed otherwise than for them to ask petitioner to do otherwise. That is the first position. The second of his positions is that the teachings he had gives him no other alternative. For the first three centuries every Christian was a pacifist. That was the sensitive point of Christianity, because one could not bear the Cross of Jesus and bear the sword of the state. You either followed the Cross or the state. Those who followed the Cross refused military service for three long centuries. Augustine was the first one that let them down. (Rec. p. 60)

Petitioner was frankly amazed to run into the difficulties with the Committee on Character and Fitness. And the more he thinks the more he is amazed because the Illinois Constitution says that a man is not required to do military duty in times of peace. The case of *In re Sullivan* is not distinguishable from petitioner's position, because of religious issues. There is a conscientious objector camp with five lawyers in it, and a member of the New Hampshire Bar, who is a conscientious objector, is the director of that camp. Petitioner was hired to teach law. It was known that he was a conscientious objector, but the Dean and President of the College, who is all out for war and a member of the Draft Board, felt it made no difference. Petitioner talked to Dean Harno about his difficulties with the Committee and asked him what he should do. He said he didn't see why there should be any difficulties. (Rec. p. 61, 62)

Petitioner could find only one case of a conscientious objector's admission to the Bar. He was not a religious [fol. 28] objector and he was admitted. Petitioner believes that the case pertaining to the conscientious objector has a bearing on his case. However, he maintains that with his life he will stick to his position because it is right. He has no other choice.

#### The Material Issue

The Committee on Character and Fitness having decided not to certify petitioner to the Board of Law Examiners, and having so decided without filing its findings of facts, it is maintained that the Committee acted contrary to law and contrary to due process of law.

The record clearly discloses that the Committee on Character and Fitness refused to certify petitioner on the sole ground that he is a conscientious objector to war. Such an action of the Committee is not justified nor supported either by law or equity, and it ought to be ordered by the Court to certify petitioner and thus permit him to be admitted to the Bar of the State of Illinois.

Petitioner being a conscientious objector to war because of his religious training and belief cannot and ought not be excluded from the practice of law, a profession chosen by him, for the practice of which he duly qualified under the laws of the State of Illinois.

### The Contention of Your Petitioner

Your petitioner maintains that the Committee on Character and Fitness acted contrary to law and equity, and its action is capricious and not in accord with the due process of law under which petitioner, after having qualified under the law to become a member of the Bar, ought to be admitted to the practice of law.

### The Essential Facts

Petitioner has complied with all the requirements of the rules governing admission to the Bar, except as to the [fol. 29] production of a certificate from the Committee on Character and Fitness. Petitioner proved by affidavits heretofore submitted to the Committee that he is a person of good moral character and reputation. In compliance with a notice from the Committee, he appeared before it, and the Committee had refused to grant him the certificate required by the rules, stating no reason for such refusal. In the absence of such reasons and in view of the fact that petitioner has complied with all the requirements for the admission to the Bar, it is presumed on the basis of the Record that the only reason for such a refusal to certify him is petitioner's statement that he is a conscientious objector opposed to war. This presumption is justified in view of the fact that the major part of the questions asked the petitioner was devoted to the religious beliefs and social philosophy of the petitioner, and to petitioner's convictions concerning his participation in war.

The fundamental issue is whether the Committee acted fairly and reasonably in its refusal to certify the petitioner

and whether the adverse recommendations of the Committee is based on sound promises and valid reasoning.

[fol. 30] POINTS AND AUTHORITIES RELIED UPON

I

*The power to prescribe the qualifications which entitle an applicant to be admitted to the Bar is a judicial one.*

People ex rel. Illinois State Bar Association v. Peoples Stock Yards State Bank, 344 Ill. 462, 176 N. E. 901.

Ex parte Garland, 71 U. S. 333 (1866).

People v. Amos, 246 Ill. 299, 92 N. E. 857.

In re Crum, 103 Ore. 296, 204 P. 948.

Elite Dairy Products v. Ten Eyck, 271 N. Y. 488, 2 N. D. 906.

Saginaw Broadcasting Co. v. Federal Communications Commission, 96 F(2d) 554.

Ex parte Secombe, 12 How. 9.

People v. McCabe, 18 Cal. 186, 32 P. 280.

II

*The Statute of the State of Illinois enumerates the qualifications required for a person to be admitted to the Bar. The Committee acting under the law must exercise its powers with sound discretion, that in failing to do so the Court will review the action of the Committee.*

Illinois Revised Statutes (1941), Paragraph 259.58, Chapter 110.

In re Frank, 293 Ill. 263, 197 N. E. 640.

In re Crum, 103 Ore. 296, 204 P. 948.

In re Stepsay, 98 P(2d), 489.

III

*The Committee on Character and Fitness has certain powers delegated to it. Such powers, even though they are discretionary, are not absolute, and they cannot be exercised arbitrarily, but must be applied in fairness without bias or prejudice.*

Ex parte Garland, 71 U. S. 333 (1866).

[fol. 31] Ex parte Secombe, 12 How. 9.



- Warbasse v. State Bar, 209 Cal. 566, 571, 28 P.(2d) 19.  
 People v. McCabe, 18 Colo. 186, 32 P. 280.  
 In re Crum, 103 Ore. 296, 204 P. 948.  
 Re Day, 181 Ill., 73, 90.  
 People ex rel, Chicago Bar Association v. Amos.  
 People v. Czarnecki, 268 Ill. 278, 109 N. E. 14.  
 In re Attorney's License, 21 N. J. L. 345.  
 People v. Pace, 354 Ill. 111.

## IV

*The Congress of the United States by adopting the Selective Service Act and giving consideration to those who because of "religious training and belief" are unable to bear arms, took the stigma from the conscientious objectors to war. An objection to war is neither a legal offense nor is it an immoral position which would disqualify a person the practice of law.*

- 50 U. S. C. A. 204, (1917).  
 50 U. S. C. A. 305 (1941).  
 Rase v. U. S., 129 F(2d) 204.  
 In re Sullivan, 57 Mont 592, 189 P. 770.  
 G. H. C. Macgregor, The New Testament Basis of Pacifism (1936), p. 126.  
 Sermon on the Mount, Matthew 5:1 to 7:28.  
 M. E. Hirst, Quakers in Peace and War (1930), pp. 156, 187, 225-240, 337, 349, 400, 419, 426, 509.  
 M. R. Brailsford, A Quaker from Cromwell's Army (1927), pp. 29, 53.  
 Sidney Fisher, The Quaker Colonies (1921), p. 23.  
 Isaac Sharpless, Two Centuries of Pennsylvania History (1900), p. 12.  
 Official Action of Methodist Church.  
 The Reporter (Official publication of the National Service Board for Religious Objectors which has charge of administration of the conscientious objector camps), April 15, 1943.  
 [fol. 32] Paul Gia Russo, History of Religious Pacifism in American Law (1938).  
 Law of Virginia (1778), 10 Henning, 334.5.  
 Georgia, Act of August 5, 1782, Colonial Records, vol. 9, pt. 2, p. 155.  
 13 Stat. 6, Sec. 17 (1864).  
 40 Stat. 76, Sec. 4 (1917).

54 Stat. 885, Sec. 5(g), 50 U. S. C. A. 305 (g) (1942 Supp.).

William Penn, *The Peace of Europe*.

Hirst, supra, pp. 156, 356-72.

Sharpless, supra, pp. 71, 75, 81.

Whittier, "Anniversary Poem" from *Poems In War Time* (1863) (John Greenleaf Whittier).

U. S. v. Schwimmer, 194, U. S. 644, 49 S. Ct. 448 (1929).

U. S. v. Macintosh, 283, U. S. 605, 51 S. Ct. 570 (1931).

U. S. v. Williams, 194 U. S. 279, 24 S. Ct. 719 (1904).

U. S. v. Sing Tuck, 194 U. S. 161, 24 S. Ct. 621 (1904).

U. S. v. Ju Toy, 198 U. S. 253, 25 S. Ct. 644 (1905).

Tutin v. U. S., 270 U. S. 568, 46 S. Ct. 425 (1926).

Rottshaeffer, *Constitutional Law* (1939), pp. 553, 554, 375-7.

## V

*The Committee's refusal to certify petitioner for admission to the Bar because of his religious beliefs and training making him a conscientious objector, constitutes an abuse of discretion, arbitrary and unreasonably, to be reviewed by the Court.*

In re Frank, 293 Ill. 263, 197 N. E. 640.

Ex parte McCabe, 293 Pac. 11.

Lowell v. Griffin, 303 U. S. 444.

Illinois Constitution (1870), Article 11, Sec. 3.

Ex parte Garland, 71 U. S. 333 (1866).

Schneiderman v. U. S. (June 21, 1943).

Scully v. Hallahan, 356 Ill. 185, p. 191.

[fol. 33]

## VI

*The Committee's refusal to certify petitioner is in effect a penalty imposed upon him because of his religious beliefs. The Committee's action is in clear violation of the Constitution.*

Ex parte Garland, 71 U. S. 333 (1866).

Lowell v. Griffin, 303 U. S. 444.

Constitution of the United States.

Constitution of the State of Illinois.

Schneiderman vs. U. S. (June 21, 1943).

Cantwell vs. Conn., 310 U. S. 296, 303.

West Virginia State Board of Education v. Barnett  
(June 14, 1943).

[fol. 34]

# ARGUMENT

I. The power to prescribe the qualifications which entitle an applicant to be admitted to the bar is a judicial one.

Petitioner is greatly handicapped in presenting his argument against the decision of the Committee on Character and Fitness in refusing to certify him and admitting him to the practice of law in Illinois, because of the absence of findings in support of the Committee's decision. To overcome such lack of findings, petitioner attached hereto the full transcript of Record, and in addition thereto abstracted within this Petition all the salient points which were brought out by the Committee members during the examination of petitioner. The Transcript of Record and the abstract thereof shows without any doubt that the Committee members were interested, and interested only in petitioner's religious beliefs and training and in his position expressed by he himself, designating such position as conscientious objector to war. While it is true that the Committee members were asking in passing a few questions as to petitioner's personal habits, as to his drinking, smoking and dating girls, nevertheless it is maintained and maintained correctly that such questions were of no importance. They were of no importance in arriving at the Committee's decision firstly because such questions as to the personal habits of petitioner were never emphasized or followed up. Secondly because it is submitted that personal habits as smoking, drinking and dating girls did not in the past, and it is not hoped that it will in the future exclude any person from the practice of law, since there are a large number of outstanding members of this and other Bars indulging, we hope moderately and within reason, in drinking and smoking and dating.

Petitioner freely admitted that he claimed and the Draft Board granted him the classification as a conscientious objector to war. Under the Federal law the Draft Board recognized that petitioner must be exempt from participation in the war and assign him to "work of national importance" (Record p. 4). Petitioner was ready and will-

ing. However, because of his physical condition he was unable to take up any work, and at the present he is unassigned as physically unfit. However, he may be called any time at the pleasure of the draft board (Rec. 3).

The power which is exercised by the Court and in consequence, of the delegation, part of it to the Committee, to set up qualifying restrictions in connection with a person's admission to the practice of law, is a judicial one, which must be exercised accordingly. We submit that the Committee failed to exercise its power as a judicial power, ought to be, in that it failed to make any findings of facts which would support its refusal to admit petitioner to the practice of law, and further it failed to act judicially in that it set up certain rules heretofore non-existing and made qualifying restrictions on the basis of bias, prejudice, which exists in the public minds against conscientious objectors to war.

The United States Supreme Court in discussing the power which a Court exercises in admitting attorneys to practice stated:

"Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power and has been so held in numerous cases. It was so held by the Court of Appeals of New York in the matter of the application of Cooper for admission. . . . attorneys and counsellors, said that Court, . . . are not only officers of the Court but officers whose duties relate almost exclusively to proceedings of a judicial nature. And hence their appointment may, with propriety, be entrusted to the Courts, and the latter in performance of this duty may very justly be considered as engaged in the exercise of their appropriate judicial functions."

The Court goes on to say that:

"The attorney and counsellor, being by the solemn judicial act of the Court, clothed with his office, does not hold it as a matter of grace and favor. The right which it confers upon him to appear for suitors and to argue causes is something more than a mere indulgence revocable at the pleasure of the Court, or at the command of the legislature. It is a right of which he can only be deprived by the judgment of the Court,

[fol. 36]. for moral or professional delinquency." *Ex parte Garland* 4 Wall (U. S.) 333, 379.

Chief Justice Taney speaking for the United States Supreme Court stated:

"And it has been well settled by the rules and practice of common law courts that it rests exclusively with the Courts to determine who is qualified to become one of its officers, as an attorney, and counsellor, and for what cause he ought to be removed. The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the Court or from passion, prejudice or personal hostility, but it is the duty of the Court to exercise and regulate it by a sound and just, judicial discretion, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the Court as the right and dignity of the court itself." *Ex parte Secombe* 19 How (U. S.) 9, 13.

The Courts of the various states follow the rules so laid down by the Supreme Court of the United States.

In *People v. McCabe*, 18, Colo. 186, 32, p. 280, the Court said:

"A Court entrusted with the power to admit and disbar attorneys should be considerate and careful in exercising its jurisdiction. The interests of the (attorney) must in every case be weighed in the balance against the rights of the public; and the Court should endeavor to guard and protect both with fairness and impartiality."

Concerning the privilege or right to practice law, the Court quotes with approval *Thornton on Attorneys at Law*, Section 62:

"The power to deny an application for admission because the evidence of good moral character is unsatisfactory is one of great delicacy and should be exercised with extreme caution and with a scrupulous regard for the character and rights of the applicant. On the other hand the standing of the profession must not be disregarded, nor must the Court shrink from the performance of a clear duty, however embarrassing."



That the Illinois cases follow the rules hereinabove established by the United States Supreme Court and the other appeal courts of the United States can be seen by the decision in *Re Day 181, Ill. 73 page 90* and from *The People ex rel Chicago Bar Association v. Amos; 246 Ill. 299, 301 (1910)* wherein the Supreme Court of Illinois stated:

[fol. 37] "It rests with the Court to determine who are qualified to become its officers as attorneys and for what cause they should be removed (in *re Day 181 Ill. 73*). This power, however, is not arbitrary or despotic to be exercised according to the pleasure of the Court, but is judicial (in *re Day supra*; *ex rel Secombe 19, How. 9*). It should be exercised with sound and just discretion according to the same rules of law which govern in the determination of other civil rights which are brought before the Court for disposal."

The Committee on Character and Fitness acts under the powers delegated to it by the Court. As the cases hereinabove cited made abundantly clear, the prescription of qualifications to the practice of law is a judicial one, the Courts themselves must apply them accordingly. The Courts cannot disregard the rules laid down, and in consequence its delegated agent, the Committee, exceeds its delegated authority if it fails to observe the rules as to the application and use of judicial power. As a Court, so must the Committee make findings of facts at the close of a hearing. The Committee was duty bound by the rules of the Court to show by its findings of fact the situation, pertinent and material facts, upon which it relied in making its decision. The Committee's failure to make findings of facts in itself is an error, because but for the reasonable conclusion to be reached from the Record, the Court would be prevented to review the Committee's decision judicially. The Committee's failure to make and present its findings of facts is prejudicial to petitioner because it handicaps him greatly in making a full presentation of his case in review. It makes it hard, if not impossible, for petitioner to argue whether or not the Committee's decision is based on substantial evidence, whether or not its decision is in compliance with the law. The Committee's failure in making findings of fact is contrary to the established practice of the Court in judicial procedure. The error of the Committee as a ground is respectfully submitted for recall to

set aside the decision of the Committee and issue its Order that petitioner be certified to the Board of Law Examiners and to be admitted to the practice of law in the State of Illinois.

[fol. 38] II. The statute of the State of Illinois enumerates the qualifications required for a person to be admitted to the bar. The Committee acting under the law must exercise its powers with sound discretion, that in failing to do so the court will review the action of the Committee.

The Illinois Revised Statutes provides that:

"Persons may be admitted to practice as attorneys and counsellors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners."

The Statute also lays down a statement of educational requirements which an applicant seeking admission to the Bar must comply with. Petitioner has fully complied with these educational requirements and has successfully passed the examination given by the Board of Law Examiners of the State of Illinois, as he was informed by said Board.

The Statute further provides that:

"Before admission to the Bar, each applicant shall be passed upon by the Committee (on Character and Fitness) in his district as to his character and moral fitness." . . . and further "If the Committee is of the opinion that the applicant is of approved character and moral fitness it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to be admitted to the Bar." *Illinois Revised Statute (1941), Paragraph 259.58, Chapter 110.*

The petitioner has met all the requirements of the above rules except the requirement concerning the approval of the Committee on moral character and fitness, which refused to certify the petitioner to the Board of Law Examiners. It is submitted that the Committee in so acting acted contrary to law, contrary to equity, and contrary to the decisions of the Court.

Petitioner is a citizen of the United States, is more than twenty-one years of age, has, as the affidavits submitted to

the Board of Law Examiners show, good moral character. Additional affidavits hereto attached (Exhibits D to I, both inclusive) prove it beyond a peradventure of doubt that petitioner is a person who well can take his place among the average citizen or average member of the Bar. He truly believes in the commands of God, and attempts and [fol. 39] does to the best of his ability conduct an exemplary life in accordance with the tenets of the Christian religion. Petitioner satisfactorily passed an examination before the Illinois Board of Law Examiners and before that he followed a course of education which complies in every respect with the statutory requirements as to the standard of educational requirements. Petitioner submitted, in accordance with the law, to an examination by the Committee, and that was where his path was barred, because apparently the Committee is of the opinion that he is not of approved character and moral fitness. There was not an iota of evidence, nor was there even an attempt to charge that petitioner is not of good moral character, and that he is morally unfit to practice law. At least not in the usual sense of the word. If the Committee has any basis for its opinion in excluding petitioner from the practice of law, that opinion, as the record discloses, must and can be based only on one thing, and that is that petitioner claims and he was granted exemption from military service because he is a conscientious objector to war, which position he takes because of his religious training and belief. As the review of the decision of this and other states clearly show, the Committee was in error, because one's religious beliefs and one's convictions based on such religious belief is and cannot be a qualifying or disqualifying requirement to the practice of law. The qualifications required by persons who desire to be admitted to the Bar are laid down by the Statute. The Statute must be followed. If the Committee fails to comply and refuses to follow the Statute, its decision is subject to judicial review and subject to be set aside by the Court on such review. See *In re Frank* 293 Ill. 263, 197 N. E. 640. *In re Crum* 103 Ore. 296, 204 P. 948; *In re Stepsay* 98 P.(2d) 489.

III. The Committee on Character and Fitness Has Certain Powers Delegated to it. Such Powers, Even Though They Are Discretionary, Are Not Absolute, and They Can-

not Be Exercised Arbitrarily, But Must Be Applied in Fairness Without Bias or Prejudice.

The Committee on Character and Fitness in exercising its [fol. 40] delegated power to determine the character and fitness of a person to practice law, exercises its power fairly without bias and prejudice. So it was said by the Court, that:

"The right to practice law is a privilege. The law conferring such privileges must be general in its operation. No doubt the legislature, in passing an enactment for that purpose, may classify persons so long as the law establishing classes is general and has some reasonable relation to the end sought. There must be some difference which furnishes a reasonable basis for different legislation as to the different classes, and not a purely arbitrary one, having no just relation to the subject of the legislation." *Re Day* 181 Ill. 73.

The Courts repeatedly considered the rules to be followed in administering proceedings and it was held that while the same strictness required from a Court of record is not required of an administrative procedure, nevertheless it must be such as to accord substantial justice and fairness. *Mill v. Hay* 10 F.(2d) 145. Among the requirements of a fair trial, the Court stipulated the opportunity be given to the party to be heard, a reasonable determination of the case supported by findings of fact. We submit that while an opportunity was given to the petitioner to be heard before the Committee, there was no reasonable determination of the case, because as the petitioner queried before the Committee, "What has one's religious position to do with the practice of law." (Rec. p. 12) It is not reasonable to inquire into one's religious beliefs, because one's religious beliefs are not grounds for striking his name from the roll. Therefore, it cannot be a ground for excluding him from the practice of law. So it was said in *Re Attorneys License* (1848) 21 N. J. L. 345 regarding the scope of an investigation into the private character of an applicant for admission to the Bar, that the investigation would be limited to such acts as would, after his admission to the Bar, be a ground for striking his name from the roll.



We understand that the Committee is charged with inquiring into the applicant's character and fitness to practice law. Character and moral fitness refer to personal and professional integrity, honesty, trustworthiness, veracity and respect to clients.

[fol. 41] We respectfully submit that the Committee in attempting to determine petitioner's character and moral fitness to practice law disregarded the purpose of its inquiry, because it cannot be maintained with any seriousness that the Bar would exclude those whose conduct is based on the strict interpretation of the Scriptures, as is the position of petitioner. Character and fitness with reference to the practice of law implies many things, including honesty and frankness towards clients. (*People v. Pace*) At no time were we able, however, to discover that either the legislators or the Courts intended ever to exclude from among the rank of lawyers those who while otherwise qualified insist upon fundamental compliance with the tenets of Christian religion, as petitioner insists. The words "good moral character" are general in their application, but of course they include all the elements essential to make up such a character. Among them are common honesty and veracity, especially in all professional intercourse. One wonders whether the Committee in refusing to certify petitioner for admission to the bar implied that fundamental belief and adherence to the teachings of Christ excludes the possibility of qualifying under the words of good moral character and fitness. We wonder whether the Committee intended and does imply that a strict adherence to the Scriptures excludes the possibility of honesty or the possibility of frankness towards one's clients, or excludes the possibility of being truthful in one's professional intercourse. We do not believe that that was the implication intended by the Committee. We rather believe that in refusing to certify this petitioner the Committee was acting under the pressure of times. That the Committee felt that in times of national emergency certain duties are cut out for each individual. We would have no quarrel with this position but for the reason that neither the Illinois law nor the Federal Statute provides that one cannot even in times of national emergency remain what one in his heart believes to be his duty imposed upon him by God.

[fol. 42] We scrutinized not only the law books but also the dictionaries and the encyclopedias to determine whether



or not the Committee under its delegated power was correct in excluding petitioner from the practice of law. We attempted to find whether or not the word "moral" and "fitness" imply that one may not be a pacifist in peacetime as well as in war time, if such pacifism is based on one's religious convictions. Our studies show that "fitness" means ability to discharge with average efficiency the duties in question. It presupposes that the applicant is fit to receive the confidence attending the relation of lawyer and client. We submit that the record shows that petitioner is fit to receive the confidence attending the relation of lawyer and client. We submit that the affidavits of Dean Harno, Exhibit D; Dean Fornoff, Exhibit E; Harold R. Clark, Exhibit F; Reverend Paul Burt, Exhibit G; Max T. Foster, Exhibit H, and Dean A. Shinneman, Exhibit I clearly disclose that applicant is able to discharge his duties as a lawyer with an efficiency which can be expected to be above the average. The affidavit of persons who have known applicant discloses that he is fit to receive the confidence of a client. As to the word "moral" Webster has the following characterization to give: Moral is characterized by excellence in what pertains to practice or conduct, springing from or pertaining to man's natural sense or reason of what is right and wrong. One may quarrel with petitioner for his stand, though we submit that question of conscience is not subject of dispute. It is said that "*gustibus non esdisputanteum*" if that is not subject of dispute how can be maintain that one's conscience, one's religious convictions can be a subject of discussion. The Anglo-Saxon jurisprudence of the American State and Federal Constitution all stand for the right of free conscience. Both the laws and customs of this country are unanimous in demanding that one's conscience should not be, however unpopular, the conduct may be, if it is based on such conscience, the reason of exclusion from any of the civil rights. If such exclusion is not countenanced by our [fol. 43] laws and our customs, how can they maintain that one's conscience will preclude one from practicing one's chosen profession. The issue here is rather narrow. The Committee did not for a moment believe or could believe that petitioner is not qualified to pass his examination in law. It did not imply nor could it that petitioner is not of good moral character in the usual sense of the word. But the Committee, however, went beyond the customary

and inquired into petitioner's religious beliefs and into his conduct based on such belief. It so happened that at the present time it is thought that pacifism is something which may be practice in peace time, it may have great value before and after war, but something that ought not to be indulged in during war time. Even if this reasoning would be correct, and we do not believe that it is, the Committee has no right either under the decisions of the Court or under the Constitution of this State or the Federal Government to refuse the certification of petitioner to the Board of Law Examiners just because he believes and says, even in war time, that war is bad and that the pacifism of Christ and his disciples is good. There is no gainsaying that the overwhelming majority of the people believe as petitioner does. The difference between him and the majority begins when he insists that this position is valid even in war time, while the majority of us, be rationalizing, maintain, but not necessarily believe, that pacifism must be discarded in time of war. In the case of *People v. Czarnecki*, 268 Ill. 278, 109 N. E. 14 the Court scrutinized the purpose of the regulations which are laid down for the admission of attorneys to practice law. The Court concluded that the power of regulations is to assure to the Court the assistance of advocates of ability, of learning and of sound character. All that for the further purpose that the public may be protected from incompetent and dishonest practitioners. (See also 7 *Corpus Juris Secundum*, p. 710) Taking the above yard stick one wonders whether the Committee in refusing to certify petitioner meant to say that his objections to war based on his religious training and belief deprives him of ability of learning, of sound character. We cannot assume that that was the case. We cannot assume that the Committee in preventing petitioner to be admitted to the Bar meant to say that he, being a religious objector to violence, becomes incompetent to practice law, or becomes dishonest, since all other qualifications required of a lawyer were fully met by petitioner. Not only did petitioner submit proof as usually submitted by applicants to the bar, but he submitted additional affidavits of great length and exhaustive content which show, if they show anything, that petitioner is rather a person of extreme sense of morals. These affidavits of Dean Harno, Exhibit D; Dean Fornoff, Exhibit E; Harold R. Clark, Exhibit F; Reverend Paul Burt, Exhibit G, Max T. Foster,

Exhibit H and Dean A. Shinneman, Exhibit I are entitled to a most respectful consideration by the Committee, and we submit that on review by this Court "character" and "moral" and "fitness" are words of abstract meaning. The abstractness is brought to earth only when the words can be measured by factual yard stick as by the measure of conduct. As to petitioner's conduct, the affidavits are of sufficient evidence and in consequence they must be considered by the Committee and by the Court. *Worbasse v. State Bar*, 219 Cal. 566, 571, 28 P. (2d) 49 and *In re Stepsay* 98 P. (2d) 489.

IV. The Congress of the United States by Adopting the Selective Service Act and Giving Consideration To Those Who Because of "Religious Training and Belief" Are Unable To Bear Arms, Took the Stigma From the Conscientious Objectors to War. An Objection to War is Neither a Legal Offense Nor is it an Immoral Position Which Would Disqualify a Person the Practice of Law.

As we have previously shown, the Committee's refusal to certify petitioner and thus excluding him from the practice of law is based on nothing but the Committee's opinion that a conscientious objector to war, as petitioner is, cannot be considered a person of good moral character and cannot be considered fit to practice law. By this action the Committee put itself in violent disagreement with the Congress of the United States, which body by enacting the Selective [fol. 45] Service Act of 1917 and 1940 recognized the legality of the stand of conscientious objectors. It is interesting to note that the Act of 1917 pertaining to conscientious objectors was a rather restricted one, in that only those who were members of the three historical peace churches were able to claim exemption from the draft on the ground of conscientious objection to war. The Act of 1940 liberalized the law in that it instructed the draft boards to exempt from war service all those who claim conscientious objection to war on the basis of religious training and belief (50 U. S. C. A. 204 (1917); 50 U. S. C. A. 305 (1941)). Congress in giving recognition to conscientious objectors looked upon the history of this country and those who were responsible for the building of the government of this Union. Congress concluded by giving recognition to conscientious objectors that applicant's position that he cannot do military service or use methods of violence without violating his

Christian convictions is not startling or unusual but has ample historical precedent.

During the first three centuries of the Christian era, almost all christians refused to do military service because they took literally the words of the Sermon the *the* Mount and other of Jesus's teaching that forbade resistance with violence. It was not until the Conversion of Constantine and the making of Christianity a state religion that this position was abandoned. However, in all times since then, individuals and minority sects have reembraced the original pacifist position. Among the various groups have been the Third Order of St. Francis of Assisi, the Waldensians, Lollards, Anabaptists, Doukobors, Moravians, Bretheran, Mennonites and Friends.

By far the best known of the Christian pacifist sects is the Society of Friends (Quakers). Many of the members of this group have consistently refused to do any form of military service even medical service. They have refused to engage in the manufacture of arms or any related occupations, to carry weapons, or to use violence in defending [fol. 46] themselves, their families and their freinds.

The Quakers in Early American Colonies travelled and lived among the Indians without weapons of any kind; they did not try to defend themselves from Indian raids; they refused to serve in the colonial militia; and they refused to be conscripted for the various Indian wars or for the Revolutionary War. Likewise during the Civil War, the World War and the present war, many of them have objected to conscription, even going to jail rather than do non-combatant service in the armed forces. Though some Quakers have not held to this traditional position, large numbers have retained their original pacifist faith.

The Methodist Church of which the petitioner is a member, has ruled in General Conference that the pacifist position is a valid Christian position and have stated that they will support those of their members who hold such beliefs. Many other churches have taken similar action. At the present time there are over 6,000 men of draft age belonging to 125 different religious sects who have been recognized as conscientious objectors to all forms of military service and are now doing work of national importance in Civilian Public Service Camps.

The presence of large numbers of pacifist in this country and England forced an early recognition of their position

by the governments of both countries. During the Revolutionary War some states provided for exemption from military service by statute or in their constitutions. Since that time 27 states have incorporated provisions in their constitutions giving varying degrees of exemption from military service. At least one state gives complete exemption to all who are conscientious objectors for religious reasons.

At the time of the framing of the first ten amendments to the Federal Constitution, Congress was aware of the problem of dealing with pacifist sects and recognized their rights. Madison and others were desirous of inserting a specific [fol. 47] provision giving complete exemption from all military service. However, since the militia was primarily under state control, it was finally decided to depend on state protection. In all of the discussions there was a clear recognition of the pacifist position and a manifest desire to protect those who held it.

The Selective Service Acts of the Civil War and the World War both provided exemption from combatant service to members of recognized pacifist sects. The present Selective Service Act provides that all those who are conscientiously opposed for religious reasons to any form of military service shall not be inducted into the armed forces, but shall be assigned to do work of national importance under civilian control. Over 6,000 men have been sent to the Civilian Public Service Camps established in pursuance of this policy of giving the privilege of alternative service.

The English government has likewise recognized the pacifist position. In the World War and in the present war it has completely exempted conscientious objectors from all compulsory service.

It is clear that the governments of the various states, the federal government and the English Government have all given express recognition to pacifist beliefs, has sanctioned those beliefs, and has given protection under the law to those who hold such beliefs. The trend has been to give them constantly increased recognition and protection. The decision of the Committee is directly contrary to the historical attitude in the country and the spirit of the exemption provisions of the recent Selective Service Act. It is impossible to follow the Committee in its decision to exclude petitioner from practice of law because of his strict



pacifist religious beliefs and conduct. It is difficult to understand it if one considers the great many Christian pacifists who were holding positions of extreme importance in the life of this nation.

[fol. 48] Since our earliest history pacifists have held high positions in government, ably aiding in administering the law. Pennsylvania was founded by William Penn, a pacifist Quaker, and for 70 years was governed by a Quaker assembly. During that period they refused to establish a militia because of their religious beliefs. Governor Thomas Penn tried to exclude all Quakers from the assembly because he said these religious beliefs made them unfit to hold office, but he was defeated in his attempt. Although they refused to use military force or to use violence in self-defense, the Quakers believed in the use of a police power and maintained law and order. Then, as now, others thought that such distinction was illogical.

Rhode Island elected a Quaker governor in 1672 and for many years the control of the colony was in Quaker hands. Here too, the Quakers refused to employ military force against the Indians, but maintained internal peace.

Many pacifists, Quakers and otherwise, have been entrusted with high public office in England and in America, among the prominent ones others than those previously mentioned are:

John Archdale, Governor of Caroline, 1690.

David Lloyd, Leader of Pennsylvania Assembly and later Chief Justice of the Pennsylvania Colonial Court.

John Bright, Member of Parliament for over 25 years and a member of the Cabinet under Gladstone.

John Greenleaf Whittier, Member of Massachusetts legislature in 1834, candidate for Congress in 1842, member of the Electoral College in 1864, 1868, 1872, 1876 and 1884.

Duke of Bedford Present member of the House of Lords.

It may be countered that while a pacifist Christian can be in colonial times clothed with the position of the Governor of Pennsylvania or of Rhode Island, that he may be the Governor of Carolina or the Leader of the Pennsylvania Assembly, that one adhering to strict Christian pacifist belief and conducting one's self accordingly may be the Chief Justice of the Pennsylvania Colonial Court, one may be [fol. 49] even a member of the English Cabinet or member of the Legislature of Massachusetts, he may be a member

of the Electoral College, but he may not be a member of the Illinois Bar. Such a conclusion is, however, erroneous because of the many precedents, according to which pacifist-in-the strictest sense of the word, while adhering to their convictions were members of the Bar.

Many pacifist have been admitted to the bar in the last 150 years. There are at present a number of pacifist-practicing law. About 20 lawyers who have registered as conscientious objectors and been drafted have been assigned to Civilian Public Service Camps.

In spite of the long history of pacifist-holding high public offices and practicing law, there is no record of their ever being disqualified because of their religious belief. There is no reported case of any pacifist even being questioned as to his fitness to practice law. The Society of Friends knows of no instance in which the point has been raised, nor has the applicant, after extensive inquiry, been able to find anyone who has heard of a similar case. There have been instances where pacifist have been admitted to practice by a Court which apparently had knowledge of their religious training and beliefs, but their fitness was never questioned.

In looking over the cases we were unable to find any which would have held that a pacifist is not fit to practice law. There is one case in which a person, not a pacifist, refused to comply with the draft law for which act his name was removed from the roll of attorneys. On appeal, the Court reversed the decision and restored his name to the roll. We could not even attempt to draw a parallel between petitioner's pacifist refusal to bear arms and that of Sullivan who refused in compliance with the draft law during the war of 1917-18, because of his sympathies to Germany. But even then the Court in reversing the decision of the Committee taking Sullivan's name from the roll said:

[fol. 50] "However, we are not prepared to say that the applicant is so far deficient in moral character that he cannot become a useful member of society and an honorable and useful member of the bar of this state." The Court held that "he may be reinstated upon a satisfactory showing that he is a man of good character and worthy of the respect and confidence of his fellowmen." *In re Sullivan* 57 Mont. 592, 189 Pac. 770, (1920)

**V. The Committee's Refusal To Certify Petitioner for Admission to the Bar Because of His Religious Beliefs and Training Making Him a Conscientious Objector, Constitutes An Abuse of Discretion, Arbitrarily and Unreasonably, to be Reviewed by the Court.**

The Constitution of the state and of the United States both emphasize that the religious belief is neither a qualification nor disqualification for holding of office or to practice a profession. No religious tests and no religious qualifications should be permitted as a requirement for the admission to the Bar. We respectfully submit that the refusal to certify the petitioner for admission solely on religious grounds constitute an abuse of discretion, on the part of the Committee, and their determination which was effected through such an abuse of discretion is arbitrary and unreasonable. Since the Committee acted arbitrarily, since its refusal to certify petitioner is unreasonable and represents an abuse of its discretion, we believe that such action is subject for judicial review for the Court. Petitioner was barred from practicing his profession, for which he qualified through many years of study. A person has a right to engage in any lawful employment for a livelihood. A person has a privilege to be admitted to the bar after having met the qualification prescribed by the rules promulgated by the Supreme Court of Illinois. To deprive a person of such a privilege solely on the basis of his religious beliefs, is, we submit, a denial of due process of law in violation of the Fourteenth Amendment.

In *Baker v. Daly*, 15 F.(2d) 881, 882 the Court, in discussing the Fourteenth Amendment to the Constitution of the United States, which declares that no state shall deprive [fol. 51] any person of life, liberty or property without due process of law, made the following meaningful statement:

"This Constitutional provision has been declared by the Supreme Court to mean not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation." (citing cases)

The right thus granted is, of course, subject to the police power of the state to enact laws essential to the public safety, health or morals; to justify a state in exercising such authority, it must appear that the interest of the public requires such interposition and that the means are reasonably necessary for the accomplishment of the purpose, and not induly oppressive to individuals.

"The Legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business or impose undue and unnecessary restrictions upon lawful occupations."

The Courts of Illinois follow substantially the Federal decision in *Baker v. Daly*, *supra*. The Supreme Court of Illinois stated:

"It is one of the fundamentals of our democratic form of government that every citizen has the inalienable right to follow any legitimate trade, occupation or business which he sees fit. His labor is his property entitled to the full and equal protection of the Federal Constitution. It is also embraced within the constitutional provision guaranteeing to everyone liberty and the pursuit of happiness. (*Algeyer v. Louisiana* 165 U. S. 578) This right to pursue any trade or calling is subordinate to the right of the state to limit such freedom of action by statutory regulations where the public health, safety, or welfare of society may require. (*Nebbia v. New York* 291 U. S. 502) However, in these instances where the police power is invoked to regulate and supervise a legitimate occupation the restraint imposed must be reasonable. The determination by the General Assembly that such regulation upon trade are needful is not conclusive and is always subject to review. In order for such regulations to be lawfully imposed upon the constitutional rights of the citizen to pursue his trade or business, the act passed under the guise of a measure to protect the public health, comfort or welfare must have a definite relation to the ends sought to be attained."

(*Banghart v. Walsh* 339 Ill. 132) *Scully v. Hallihan* 365 Ill. 185, 191 (1937)

[fol. 52] The right to practice law is a privilege or franchise. 7 *Corp. Juris Sec.* p. 708. The refusal of such a



privilege should not be done in a manner not consistent with the due process of law. So it was said by this Court.

"The right to practice dentistry is a valuable right. It is a property right within the due process clause of the Constitution. (citing a case) Revocation of the license of a professional man to practice his chosen profession carries with it not only disgrace and humiliation but deprives him of his means of earning his livelihood. It is the death of his professional life, and there is usually no resurrection after such a death. In a proceeding of this nature, due process of the law requires a definite charge, adequate notice and a full, fair and impartial hearing." *Kalman v. Walsh*, 355 Ill. 341, 346.

We respectfully submit that the refusal of the Committee to certify petitioner for admission solely on the basis of his religious beliefs was arbitrary and unreasonable and it deprived the petitioner of due process of law.

Although a Court will ordinarily refuse to exercise its power to admit applicant to practice law in contravention to the adverse recommendation of a Committee of Bar Examiners, a Court will exercise such powers when "convincing showing is made by the applicant to the Court that such adverse recommendation is not based upon sound premises and valid reasoning." *Spears v. State Bar of California* 294 Pac. 697, 72 ALR 923, 928.

The Committee's action in this case does not measure up the standard set by this Court which said:

"The Court will not ordinarily review the decision of the Committee on Character and Fitness against granting a certificate. If such a review may be had in any case it will be had where there has been an arbitrary refusal to hear and consider evidence which may be presented, or a willful refusal of a certificate manifestly not based upon an investigation and consideration of the applicant's qualification and. . . . The granting of the certificate is committed to the judgment and discretion of the Committee after a personal examination of each applicant and an investigation of his previous history and such evidence as may be produced. Unless a manifest abuse of this discretion is clearly shown, its judgment will be accepted



as final and no re-examination of its decision will be undertaken." *In re Frank* 293 Ill. 263 (1920)

[fol. 53] We know the Courts will not over-ule the judgment of a Committee for a mere difference of opinion as to the qualifications and general fitness, but we believe that the Court will set aside the decision of a Committee which as in the instant case is arbitrarily biased and contrary to the law of this State and of the Constitution of the United States.

An attorney has a duty to aid the Court in seeking to help it by seeing that actions and proceedings are conducted in a proper and dignified manner, free from passion and personal animosities and decided on the merit only. He has a duty to aid any effort under the Court to root out corruption and fraud and to devote his ability, skill and diligence along ethical and professional lines to the interest of his client. The petitioner feels that, and has shown, he is qualified and that he will discharge above duties of an attorney with honesty and faithfulness. We again refer to the absence of any findings of fact of the Committee and to the difficulties which we encountered because of that, and we also refer to the necessity of making certain assumptions and look for implications raised by the questions of the Committee members.

There appears to be an implication that the Committee felt that the applicant could not take the required oath of office because he refused to bear arms. There has been no question as to his sincerity or his willingness to take the oath, and there is no doubt as to his attachment to the principles of the Constitution and his belief in the democratic form of government. The question is whether his conscientious objection constitutes a mental reservation that makes it impossible for him to take the oath to support the Constitution.

Two cases which involved the taking of oaths by persons who were not willing to give an unqualified pledge to bear arms have been considered by the Supreme Court of the United States. These cases are not authority in this case for the following reasons:

1. Both of those cases involved the admission of aliens to citizenship and were based upon the absolute power of

[fol. 54] Congress over aliens and its power to grant citizenship on such conditions as it wishes to impose.

2. Congress as a condition of admission had required an oath that the prospective citizen would "support and defend the Constitution against all enemies, foreign and domestic." This had been expanded by the administering agency to include a promise to bear arms. The oath required of the applicant is simply to "support the Constitution."

The Department of State, in granting visas for foreign travel, requires an oath of allegiance but hasn't specified that the applicant must be willing to bear arms. A large number of pacifists have taken that oath, some of them recently in leaving to do relief work in other countries. Never has their capacity to take that oath been questioned.

3. The decision in these two cases were based upon the individual's refusal to bear arms even though Congress had not granted exemption. The applicant's refusal has been based upon a specific exemption of Congress under which he has qualified and been recognized.

4. Both of these decisions were by a divided court (6-3 and 5-4) with vigorous dissents in each case. These dissenting opinions more accurately reflect the present attitude of the court in protecting religious freedom.

Chief Justice Hughes in his dissent in the *Macintosh* case stated that a similar oath has been required of holders of federal offices but that it had never been considered that conscientious objectors were unable to take the oath of office. On the contrary, the historical policy of Congress in Exempting conscientious objectors showed that it never considered a willingness to bear arms was essential to the taking of the oath.

Justice Holmes dissenting in the *Schwimmer* case involving the exclusion of a pacifist woman said:

"Some of her answers might excite popular prejudice, but if there is any principle in the Constitution that imperatively calls for an attachment than any other, [fol. 55] it is the principle of free thought—not free thought for those we agree with but freedom for the thought we hate.

... I would suggest that the Quakers have done their share to make this country what it is, that many

citizens agree with the applicant's beliefs, and that we never regretted our inability to expel them because they believed more than some of us in the Sermon on the Mount."

VI. The Committee's Refusal to Certify Petitioner Is in Effect a Penalty Imposed upon Him Because of His Religious Beliefs. The Committee's Action Is in Clear Violation of the Constitution.

Now the Record discloses not even a shadow which could be cast upon petitioner's moral character and fitness. There is no doubt that on the contrary, there is convincing evidence of his high moral integrity and honesty. There is no doubt that petitioner is well aware of the responsibilities of a lawyer. There is proof of his rather unusual learning, as it is testified to by his being chosen as a teacher of law. The Committee erred and erred grievously to the prejudice of petitioner when it refused to certify him to the Board of Law Examiners. The Committee erred because, as it was said in *Ex parte Garland, supra* although the legislators may prescribe qualifications for office of attorney, they cannot exercise that power "as a means for infliction of punishment against the provisions of the Constitution." The Committee's refusal in certifying petitioner is arbitrary and unreasonable, because it is based on neither law or customs. Petitioner maintains that participation in and use of destructive violence as in a war is contrary and incompatible with his religious obligation. The Committee refusing certification inflicted a punishment against petitioner for no other reason but because of his religious beliefs. The Committee just about told to petitioner, "Well if you are willing to give up your religious beliefs we shall admit you to the practice of law," thus placing petitioner under a restriction as to religious freedom. Such compulsion is not countenanced by our Courts, because

[fol. 56] "Official compulsion to affirm what is contrary to one's religious belief is the antithesis of freedom of worship, which, it is well to recall, was achieved in this country only after what Jefferson characterized as the 'severest contest which I have ever been engaged'."

The Supreme Court of the United States in a series of cases pertaining to freedom of conscience, freedom of religion and freedom of speech in the so-called Jehovah Witnesses cases stated that freedom of religion among others is protected by the First Amendment from infringement by Congress, and that it is among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from infractions by state action. (*Lowell v. Griffin* 330 U. S. 344 and other cases cited.)

We do not intend to burden the Court by elaborate quotations from the Constitution, but we feel that it is necessary in passing upon the action of the Committee to recall that the First Amendment of the Constitution of the United States there is an injunction that:

"Congress shall make no law respecting the establishment of religion or providing the free exercise thereof."

One wonders whether the words of this Amendment must become meaningless as they do if the Committee's action is upheld. One wonders whether petitioner's free exercise of his religion can be prohibited by compulsion and duress in that he is told that the Committee is upheld and that he may not practice law for which he prepared through many years of study, unless he desists from practicing his religion as his conscience dictates.

We wonder whether the Committee felt that it followed the Fourteenth Amendment to the Constitution of the United States when it refused to certify petitioner who otherwise qualified the practice of law. That Amendment states:

"Nor shall any state deprive any person of life, liberty or property without due process of law."

It may appear trite if we repeat that the practice of one's profession is property right. And we maintain that the Committee by its refusal to certify petitioner took away [fol. 57] his property right, valuable or otherwise depending on his future practice, by refusing to certify him to the Board of Law Examiners, and in so doing the Committee disregarded the Constitution of the United States.

Petitioner's convictions which prohibit his bearing arms

are not a result of cowardice nor of lack of patriotism. They are a direct and ultimate result of his religious beliefs and of his interpretation of the New Testament. When the Committee refused to certify petitioner for admission to the Bar, it inflicted punishment on him because of his religious beliefs. Such action of the Committee is clearly unconstitutional because *Article 11, Section 3 of the Illinois Constitution (1870)* provides:

"The free exercise and enjoyment of religious profession and worship without discrimination shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions. . . ."

Courts have had a jealous regard for the freedom of religion and its determination of such cases was guided by the spirit of freedom and tolerance in which our nation was founded. The Courts have acted under the presumption that under which the citizens of this nation live in a

"free world in which men are privileged to think and act and speak according to their convictions without fear of punishment or further exile so long as they keep the peace and obey the law." *Schneiderman v. United States* June 21, 1943.

The Committee in refusing to act on behalf of petitioner violated the Fourteenth Amendment of the United States. In *Cantwell v. Connecticut* 310 U. S. 296, 303 the Court after discussing the First Amendment stated:

"The Fourteenth Amendment has rendered the legislatures of the state as incompetent as Congress to enact such laws. Constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organizations or form or worship as the individual may choose cannot be restricted by law. On the other hand it safeguards the free exercise of the chosen form of religion. . . ."



[fol. 58] In *West Virginia State Board of Education v. Barnette* June 14, 1943 the Court stated:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no election."

The Court recognizes the power of a state to impose restrictions which a legislature may have a "national basis" for adopting under the due process test.

"But freedom of speech and of press, of assembly and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the state, it is the more specific limiting principles of the first Amendment that finally governs the case."

The petitioner without any disrespect to the country or to its representatives, and without inducing anyone to believe likewise, and without denying the right to others the right to believe differently interprets the Bible as commanding that he should not participate in destructive violence or in war. His sincerity and his devotedness to this belief is evidenced by his willingness to suffer punishment and even risk his own life rather than act in contravention to his belief.

Freedom of conscience is not limited to conveniences and freedom of religion is not restricted to ceremonies or to matters superficial in their nature.

"But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order."

*West Virginia State Board of Education v. Barnette*  
U. S. June 14, 1943.

The so-called "misconduct" for which petitioner could be reproached for is his taking the New Testament too seriously. Instead of merely reading *the* preaching the Sermon [fol. 59] on the Mount, he tries to practice it. The only fault of the petitioner consist in his attempt to act as a good Christian in accordance with his interpretation of the Bible, and according to the dictates of his conscience. We respectfully submit that the profession of law does not shut its gates to persons who have qualified in all other respects, even when they follow in the footsteps of that Great Teacher of mankind who delivered the Sermon of the Mount. We respectfully submit that under our Constitutional guarantees even good Christians who have met all the requirements for the admission to the bar may be admitted to practice law.

Because of our firmly rooted tradition of freedom of belief, there should be no presumption on the part of a Court which will circumscribe liberty of thought and of religion. *Schneiderman v. United States, U. S., June 21, 1943.*

#### CONCLUSION

It was held by the Supreme Court of California in the case of *Ex parte McCabe, 293 Pac. 247* that where the Committee of Bar Examiners denied the application of admission to the Bar, after due investigation, a Motion to the Court to be admitted to practice is the proper procedure. It is for this reason that petitioner submits his Petition and Brief in support thereof to review the action of the Committee on Character and Fitness and to grant him a license to practice law.

Petitioner offers to submit to an examination the Court may direct and prays that he may be granted the license or that a rule be entered on the Committee to answer this Petition and grant the petitioner a certificate to the Board of Law Examiners as required by the rule of this Court.

Petitioner submits that while he, because of religious training and belief, is unable to support the violent means which were chosen by this country in maintaining and obtaining certain freedoms against the adversaries of this [fol. 60] country, he nevertheless believes wholly in obtaining and maintaining such freedoms. To paraphrase Justice Murphy of the United States Supreme Court, the action of the Committee bears "melancholy resemblance to the action" of the totalitarians whose rule this country is fight-

ing against. It is submitted that the resemblance is great, and the consideration of such resemblance is melancholy. It is not to be hoped for that while fighting for certain basic freedoms the Committee will be permitted to take away the primary basic freedom, that is that of religion. We submit that if the Committee is permitted to exclude this petitioner from the practice of law because of his religious beliefs, then our fight for freedom is doomed to failure from the beginning. We do not believe that this Court will permit the Committee to stamp the freedom of conscience and freedom of religion as incompatible with the practice of law.

Therefore, it is respectfully prayed that the Committee be ordered to grant this petitioner a certificate to the Board of Law Examiners in accordance with the rules of this Court.

Respectfully submitted, Francis Heisler, Attorney  
for Petitioner.

[fol. 61]

EXHIBIT "C" TO PETITION

State Board of Law Examiners

State of Illinois

Horace B. Garman, Secretary

602 Millikin Building, Decatur, Illinois

March 22, 1943.

Mr. Clyde W. Summers, University of Toledo College of  
Law, Toledo, Ohio.

DEAR MR. SUMMERS:

The communications you have recently addressed to me with affidavits of various persons, including Dean Harno, have been received. This reply is personal and not an expression of the Committee on Character and Fitness.

I think the record establishes that you are a conscientious objector, also that your philosophical beliefs go further. You eschew the use of force regardless of circumstances but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe

to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

Your conduct is governed by a higher law which we all hope may some day prevail. In the meantime most of us think chaos would prevail and civilization might be destroyed if the wolves are not kept at bay. Lawyers have the job of aiding in the administration and enforcement of the law,—all the law. What protection can the law be to the weak if lawyers do not consider its mandates to be entitled to obedience by force if necessary? Can a man conscientiously take an oath to support the Constitution and the laws, at the same time reserving the use of force from the meaning of "support"?

I do not argue against your religious beliefs or your philosophy of non-violence. My point is merely that your position seems inconsistent with the obligation of an attorney at law.

Yours truly, Horace B. Garman.

HBG:RC

[Fol: 62]

EXHIBIT "C-1" TO PETITION

University of Toledo, Toledo, Ohio

March 23, 1943.

Mr. Horace B. Garman, 612 Millikin Building, Decatur,  
Illinois

DEAR MR. GARMAN:

I received your letter this afternoon and feel that I should answer it—not to dispute your position but rather to more fully explain my own so that you might understand. I wish to refrain from arguing the validity of the position for it is such a personal thing that any argument is futile. We can not convince one another of the rightness of our own beliefs but only learn to respect one another for the sincerity of the others' convictions.

I was aware of the reasoning on which you felt I was unfit to practice law and I felt the weight of its logical force. Your approach to the problem made me fully aware of my own apparent logical inconsistency and compelled

me to reexamine and think through the whole relationship to the practice of law. That alone has been worth much of the agony that this whole affair has caused.

Believe me, if I felt deep inside myself that the law was essentially based upon the use of un-Christian force, that the practice of law would involve me in conduct contrary to my interpretation of the Sermon on The Mount, then I would never have applied for admission to the bar any more than I would enlist in the army. If in the practice of law I should find myself expected to act in a way inconsistent with my inner convictions, then I should immediately withdraw. It is simply because I do not feel or find the conflict that I shall continue to seek admission.

My beliefs as to the rightness of the use of force certainly can not be organized into an infallible logical pattern. To do so would be to rationalize mentally, while the truth is, that it is based on an inner compulsion beyond explanation. You can not prove, explain, nor organize your belief that there is a God; you can only believe. Yet would you deny that belief simply because it came from within the heart rather than from without the mind?

It is at this point that I am afraid you have totally misunderstood my problem. You want me to be logically consistent, but I can't be and be honest. You want to take the logical implications of my conscientious objection to the use of violence in particular instances and apply them to other situations. To me they are different though I can't really explain why in a logical and scientific sense. Armies are different from police forces, killing is different from restraining, and non-violence never implies non-resistance. I can give you logical answers on the distinctions but frankly, they are more rationalizations and the real reason is something within which can not be explained.

[fol. 63]

March 23, 1943.

MR. GARMAN:

The fact that law permits self-defense does not mean that it requires it. Those who can not believe in non-violence must have some means of protection. They use the means they believe are right. I could not kill a man because I believe it wrong, yet I do not believe those to be murderers who do so because the government says they ought



and they believe that obedience is right. You felt this illogical and perhaps it is. I can not help it for I believe it regardless of logic.

I realize that a lawyer owes a special obligation to protect society from destructive forces. I am not sure that any lawyer really believes he owes a duty to enforce all legislative or judicial acts. As one lawyer said in this regard, "Even the most enthusiastic militarist would not kill their own family simply because the government ordered it." I am sure that if I were in Germany I would have no part in helping enforce the anti-Jewish laws. If it happened in this country I do not believe I should be bound to help in such un-Christian law enforcement. Every man with any moral integrity will draw the line at some point. The man who will not draw a line is not fit to practice law.

Throughout the legal structure there is an element of force lurking in the background. Yet that is not the strength of law. Men obey laws because they believe they ought and when law is enforced only by physical compulsion there is no longer law but incipient revolution. Fascism believes in law by superior force, democracy believes in law by consent. There are of course those who fail to see the moral obligation to obey the law. In these, the special cases, the law brings to bear its restraining and corrective influence. I see no objection to that element of the law, although I confess its apparent logical inconsistency with my other beliefs. This force exists almost entirely in the criminal law area which is a small portion of the law. I do not believe one is obligated to become a prosecuting attorney and I am sure he is not required ever to ask for the death penalty. In your practice of law, do you find many times when you are expected to personally use physical force on another individual?

Since the hearing I have been doing considerable reading to see if any other person found themselves in the same sort of dilemma. In addition I have written numerous letters to try and uncover any information that might be available. My position is not unique for Christians ever since the beginning have held these pacifist views. It has been minorities yet they have taken the "absolute" view of the use of violence.

The most notable example has been the Quakers who since 1650 have clung to pacifism, even refusing to strike

in self-defense or in defense of their families. They practiced this consistently through persecution, Indian raids, and wars. Some Quakers have not held to it but many have. Among those who took the absolute pacifist position are William Penn who established, organized, and governed a colony. His views were almost identical to those I try to follow yet he was able to maintain law and order.

[fol. 64] Others with like views are John Bright, member of Parliament and member of the British cabinet; John Greenleaf Whittier who was a member of the state legislature, a candidate for Congress, and for 20 years member of the electoral college; and many others.

I have found that there are a number of pacifist lawyers, especially in the state of Pennsylvania. They are known to be pacifists, were admitted to practice by committees of courts who knew of it, and are still practicing. At least one was a conscientious objector in the last war and was admitted to practice before the United States Supreme Court shortly after the war. In none of these cases was the question even raised as to their fitness and none of them have found any essential inconsistency between their religious beliefs and the practice of law.

I have found at least one case in Illinois where a person was admitted by a member of the Character and Fitness Committee who knew that the applicant was a pacifist. He has said that he felt at the time that the views of the applicant in that respect were no grounds for disqualification and that he still feels that way. I know the applicant personally and know that his beliefs in this respect are almost identical to my own.

It has struck me strange that with all of the pacifists that have practiced law in this country in the last 150 years, that there is not but one reported case where this problem has been raised. Nor have any of the Quakers any record of it being raised unofficially. No other peace or pacifist group has ever heard of such a case.

I mention all of these things merely to show that the logic of my position and its distinctions may be far from clear, that I am not the first one to make that sort of distinction. Whatever the weakness of my logic, historical practice is clear. It is with the reinforcement of this knowledge that I continue in my convictions and still believe there is nothing inconsistent between the practice

of law and *the* my own interpretations of the mandate of the Sermon on The Mount.

I did not obtain the affidavits which you have been receiving because I thought you questioned my sincerity. Rather it was to make the record clear that the issue was solely my religious convictions, that they had never influenced me inconsistently with the practice of law, that those who knew me best in my actual conduct found no flaws in my actions in regard to the law and maintenance of order, and that they felt I was a fit person to practice law. I believe that the best test is what I have done and not what I might do in some unlikely hypothetical situation.

This has been extremely long and perhaps in spots has shown some impatience. I appreciate the viewpoint of the Committee and know your own position. I do not mean to argue but I have hoped that you might understand. We do not believe alike, and I say with all sincerity, neither of us can be sure we are right. Each must follow out his own convictions and I do hope that you will not think less of me for doing that.

Sincerely yours, Clyde W. Summers.

[fol. 65]

EXHIBIT "D" TO PETITION

AFFIDAVIT

STATE OF ILLINOIS,

County of Champaign ss:

In the Matter of the Application of Clyde Wilson Summers  
for Admission to the Bar of Illinois

Albert J. Harno being first duly sworn deposes and says that he is Dean of the College of Law of the University of Illinois; that he knows Clyde Wilson Summers, applicant for admission to the Bar of Illinois; that he became acquainted with the applicant in September 1939 when the latter entered the College of Law of the University of Illinois as a regularly enrolled student in that College; that the applicant entered upon his law studies after having made an excellent record in the College of Commerce and Business Administration of the University, from which College he was graduated in 1939 with a Bachelor of Science degree,

with high honors in accountancy; that applicant made an equally high record in the College of Law of the University, from which College he was graduated in June 1942 with a degree of Doctor of Law (J. D.) with high honors. Affiant further alleges that he knew the applicant well and was in a position to observe his conduct during the period the applicant was enrolled in the College of Law; that applicant's conduct throughout was exemplary; that affiant was familiar with the fact that the applicant was deeply religious, that he adhered to the tenet that war is inconsistent with his religious beliefs, and that he is a conscientious objector. Affiant alleges further that he has never observed anything in the opinions and conduct of the applicant that leads the affiant to believe that the applicant's adherence to his religious convictions is inconsistent with the highest qualifications associated with a lawyer in the practice of law. Finally, affiant alleges that it is his belief that the applicant has an unusually high sense of ethical values and that he believes the applicant's conduct in the practice of law would be governed throughout by exemplary ethical principles.

Subscribed and sworn to before me, a Notary Public,  
 this — day of March, 1943. — — — Notary  
 Public.

[fol. 66] EXHIBIT "E" TO PETITION

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

In the matter of the Admission to the Bar of Clyde W.  
 Summers

#### SUPPORTING AFFIDAVIT

Charles W. Fornoff, being first duly sworn, deposes and  
 says:

That he is a member of the Bar of the State of Illinois, and formerly a resident of the City of Pana and State of Illinois; that he now is a resident of the City of Toledo, Lucas County, State of Ohio; that he is the Acting Dean of the College of Law of the University of Toledo, located in the City of Toledo and State of Ohio; that in September,

1918 he enlisted in the armed services of the United States and received an honorable discharge from the Army in December, 1918.

That he has known Clyde W. Summers since September 14, 1942, and has been intimately associated with him from that time to the present; that he is acquainted with the general character and reputation in this community of said Clyde W. Summers.

That Clyde W. Summers is a young man of excellent character and high intellectual attainments; that he is a man of deep and sincere religious belief, and active in the work of his church in this locality and in regular attendance on church services.

That Clyde W. Summers now holds the appointment of Instructor in Law in the College of Law of the University of Toledo, and has been reappointed to this position for the coming year; that at the time when Mr. Summers was tendered his first appointment to this position, he informed affiant of his status under the Selective Service Act of the United States, and that he was a conscientious objector to military service; that Mr. Summers was recommended for [fol. 67] such appointment by eminent scholars of the faculties of both the University of Illinois and the Columbia University Schools of law who were aware of the fact that Mr. Summers was a conscientious objector; that the administration of this University and College of Law considered the fact that he was a conscientious objector to be no ground of objection to his appointment.

That Mr. Summers has not undertaken to propagate his beliefs as conscientious objector in his role as Instructor in Law, and has conducted his work in the College of Law in a discrete and satisfactory manner.

That Mr. Summers has done an excellent and thoroughly satisfactory service in the teaching of Law; that he has recently had published a scholarly article in the Michigan Law Review dealing with the case law on procedure of the National Labor Relations Board; that he has a very pleasing and effective personality as a teacher of law; that he is careful and diligent in his work; that he displays an extensive and sound knowledge of law which in the opinion of the affiant demonstrates his fitness of mind for admission to the Bar of the Supreme Court of the State of Illinois.

That said Clyde W. Summers was placed by the President of the University of Toledo on the faculty Religious



Council at the beginning of the school year, said Council being charged with the duty of preparing and conducting programs for religious convocations of the students of the University; that thereafter Mr. Summers was appointed by the President as co-chairman of said Religious Council, and has continued to perform those duties to the satisfaction of the University administration.

[fol. 68] That Mr. Summers has by his character and conduct won the respect and friendly regard of the faculty of the University of Toledo and of the students of his classes in Law, and has an excellent reputation in this community for sincerity, integrity and intellectual force.

That Mr. Summers is honest and sincere, dependable, careful and conscientious in every respect; that he respects the institutions of this nation and is a patriotic citizen with a fine sense of responsibility for the future of the country; that affiant feels bound to recommend him to the Character and Fitness Committee of the Supreme Court of the State of Illinois as a man of proper character for admission to the Bar of said court.

Further affiant saith not.

Charles W. Fornoff.

STATE OF OHIO,

Lucas County ss:

Subscribed and sworn to before me this — day of April, 1943.

\_\_\_\_\_, Notary Public.

[fol. 69] EXHIBIT "F" TO PETITION

Battery "I" 62nd. CA(AA).  
A. P. O. 302, % Postmaster, NYC.

5 March, 1943, North Africa.

Subject: In Re Clyde Summers and Admission to the Illinois Bar.

To: Horace Garman, 602 Milikin Building, Decatur, Illinois.

1. I have learned that Clyde Summers has been refused admission to the Illinois Bar because of his draft status, and position taken in the present conflict. As a member

of the Armed Forces, and as a member of the Illinois Bar, I should like to volunteer the following information which might help to clarify the facts and issues in the present case.

2. I have known Clyde Summers for over nine years. We first met as opponents in Illinois high school debates and oratorical contests. During those same years we were competing against each other in an Illinois Council of Churches Oratorical Contest, called "The Prince of Peace Contest", for a college scholarship. We both were unsuccessful as far as winning the State Contest, but in the fall of 1935, we both entered the University of Illinois College of Commerce, taking the same pre-law curriculum, with hopes of later entering law school. During our undergraduate studies, we worked together on committees with Campus Religious groups; namely, the YMCA and the Wesley Foundation. In law school we roomed together for two years and took many of the same courses. We have lived as brothers; yet we each have followed our own beliefs in opposite directions with hopes of obtaining a similar goal in our professions.

3. The religious philosophy of Clyde Summers as a conscientious objector to war has not developed as a result of America's entry into the war. In 1936 as a Sophomore in college, the foundations were laid. This was in a period when everyone declared that he would not fight a foreign war; that we must build our diplomatic relations to prevent war; and that we must enact legislation to stem our rushing into an engagement wherein we had nothing to gain. After Pearl Harbor, public opinion in the Nation changed abruptly, but Summers is one of those individuals who will not change his deep convictions for public popularity, nor would he be swayed by mass psychology. He believes that Christianity is diametrically opposed to all wars; therefore he can play no part in them. After taking two years of basic military training at the University of Illinois with an excellent record, Summers developed his own philosophy of War; so his convictions are based on practical observation and not a mere whim or passing fancy.

4. In my association with Clyde Summers, I have discovered nothing that could be interpreted as opposed to [fol. 70] the objects and methods of law. As to his moral

integrity and general character, I should say that his record in college and law school, and positions with which he has been entrusted during that time, are sufficient evidence needing no elaboration.

5. Let us take away one factor, which, if this factor did not exist, the question of Summer's character and fitness to practice law in Illinois would not arise. If America was not at war, I believe Summers would be admitted without question.

6. Summers is an example of the average farm boy who has taken advantage of every American educational facility. All seven years of his college work was at a State-Supported University on scholarships. Certainly any person who has been given such opportunities will protect and do his utmost to defend the system which has given him an equal chance. How that system may be best protected will be a question which historians will determine. During the present war is not a time for restricting certain religious and philosophical thought in the name of patriotism; however we cannot allow anyone to interfere with our war effort, for America *must* win this war. The line of demarcation between personal liberties and National Responsibilities is difficult to draw.

7. We must admit that under the National Socialistic State, there is little need for the legal profession. A militaristic system has its own methods of gaining its ends by force of arms rather than legal means; however after this war is over we all will be convinced that there should be a better and less costly method of settling International disputes. In the philosophy of Clyde Summers, you will not find any part that is Un-American. There is no quarrel or questionings of the basic constitutional rights. The only division comes in the methods used in defending and protecting our American Democracy. When covering the whole picture of the character and fitness of a man to practice law, I think that one point should not overshadow many other favorable points that arise in this case.

H. R. C. (Harold R. Clark),

1st. Lt. CAC Battery "I," 62nd. Coast Artillery (AA).

[fol. 71]      EXHIBIT "G" TO PETITION

STATE OF ILLINOIS,

County of Champaign, ss.:

I, Paul Burt, being duly sworn, declare on oath that I am Minister of Trinity Methodist Church, in Urbana, Illinois, and Director of the Wesley Foundation at the University of Illinois.

And I further declare that I have known Mr. Clyde W. Summers since the fall of 1937, or the beginning of his junior year at the University of Illinois; that ever since that time, until his graduation from the Law School of the University of Illinois, he was a very faithful attendant upon the services of Trinity Methodist Church and an active participant and leader in the Wesley Foundation, the Methodist student organization at the University of Illinois; that in the fall of 1938 he became a member of the Student Council of the Wesley Foundation, in 1939 Vice-President, in 1940 President, and for the year 1941-42, while a senior in the Law School, was employed by me as Student Assistant, in which capacity I would only appoint some one in whom I have complete confidence and in whom I would be ready to place implicit trust.

And I further declare that because of these various relationships held by Mr. Summers to the activities of the Wesley Foundation, I had opportunity of seeing him very frequently, in the last two years almost daily; and that I had long conferences with him regarding nearly every conceivable phase of his Christian beliefs, attitudes, and practices. I came to know him as well as it is possible for any man to know a younger friend and associate. In view of this intimate knowledge, it is my well-considered and tested judgment that Mr. Summers is one of the finest young men that it has been my privilege to know, and I have been in a position to know many. I have never failed to be impressed by his intellectual and moral honesty which he has maintained in every circumstance in which I have had the opportunity to observe him, often at the cost of what might have been regarded as his personal advantage. I have known but few to equal him in genuine social concern and unselfish devotion to the public good of any community of which he was a part. He has always stood courageously for his convictions, but never intemperately. He has always

been understanding and tactful, with genuine respect for the personalities and convictions of other people. Because of this he was held, not only in deep respect, but in real affection by the several hundred students who were actively related to the Wesley Foundation. And this is true also of many others on the University of Illinois campus. In the year 1940-41 he was president of the Student Religious Council which correlates all the religious organizations on the campus; and in 1941-42 he was counsellor to this same organization. He was widely known on the campus and I know of no one who did not deeply admire and respect him, however they may have differed with him in any matter of belief or policy. In more intimate ways he befriended many students, counselling with them, giving them unsparingly of his time and energies and the benefit of his, markedly superior ability and experience. He was the chief organizer and proctor (so recognized by the University of Illinois) of Wesmen, a cooperative resident group of University of Illinois students affiliated with the Wesley Foundation.

And I further declare that I had occasion to counsel with Mr. Summers regarding his vocational plans. I felt him to be especially fitted to enter the ministry of the Methodist Church, and was convinced that he could render distinguished service in that field. I am still so convinced. But Mr. Summers decided to continue the study of the law and to prepare himself for the practices of the law, altogether because he believed that in the legal profession he could be of the largest possible service. I feel sure that this is the motive that has always actuated him to a degree rarely encountered. And if I know anything of human character, I know of no one more fitted by reason of character to be admitted to the practice of law than Mr. Summers.

And I further declare that as early as the school year of 1938-39 I became aware that Mr. Summers shared the convictions usually known as those of Christian pacifism and that he was a conscientious objector to war on account of his Christian beliefs. These convictions had probably become formed in him even prior to that time. They could be regarded as the logical consequence of the interpretation of Christian faith and teaching prevailingly presented in the Wesley Foundation, both in the regular preaching and in that of distinguished Christian leaders who from time to time have visited the Foundation. However, he was also



fully exposed here to other points of view as well, since the most sincere Christians differ in this matter. Mr. Summers is quite decidedly not the kind of person to be unduly influenced in his points of view by his associations or his emotional inclinations. He has very definitely come to his views about war through much wrestling of mind and spirit. And they are altogether based upon his Christian beliefs. On this point I am as deeply convinced as I am of anything. And of course the Methodist Church of which both Mr. Summers and I are a part, recognize both conscientious objection to war and conscientious participation in war, as equally valid positions for its members, entitling them to the full support and fellowship of the church. Having come to these convictions, Mr. Summers has always stood consistently by them in every circumstance I have had the opportunity to observe. And what is more, I have repeatedly seen him endeavor to apply the method of reconciliation in the friction and misunderstanding of various human relationships.

And I further declare that from intimate knowledge of Mr. Summers' views on war I see absolutely nothing that would conflict with the faithful discharge of any responsibility that his admittance to the practice of law would entail. He is not an "absolutist" who does not believe in any kind of restraining force in society. He would, I sincerely believe, fully support a police power democratically established and controlled, operating within a framework of law and responsible, through courts, to some higher authority than itself. It is because he believes war is not the exercise of such police power, but an irresponsible and [fol. 73] anarchic use of force, destructive of the best interests of all nations participating, that he believes it to be unchristian and can not conscientiously support it. I know of no one more ready to resist injustice in ways which he believes will make for justice; nor any one more ready to sacrifice himself for principle in ways that will actually serve and not betray that principle.

— — —, Minister of Trinity Methodist Church, and  
Director of the Wesley Foundation at the University of Illinois.

Subscribed and sworn to before me this — day of  
—, A. D., 1943. — — —, Notary Public.

[fol. 74]

EXHIBIT "H" TO PETITION

February 20, 1943.

To Whom It May Concern:

This certifies that Clyde W. Summers is a personal friend of mine, and that he has been since September, 1940. It was my privilege to become intimately acquainted with him through our various relationships. I often assisted him with his religious activities at the Wesley Foundation during my two years of school at the University of Illinois. He and I spent several evenings together in double dating with girl friends while at school. On numerous occasions, we have met in the libraries, have studied together, and have had long discussions concerning a variety of subjects.

Mr. Summers's religious views and convictions are well known to me. His beliefs are based on his interpretations of the Bible, and I know that he is sincere in his convictions. While I cannot agree with him in his beliefs, as evidenced by the fact that I am in the Army, nevertheless, I hold him in high regard. The road that he has chosen to follow is a much more difficult course for him to travel than the road would have been had he chosen to divorce the dictates of his conscience and gone into the Army. He is not a coward and he is not afraid of death.

Mr. Summers is a clean-living young man whose character is beyond reproach. He is exceptionally alert, intelligent and industrious. He is stable, sensible, and well balanced in all his actions. He has a pleasing personality at all times whether in a group or in private. Mr. Summers is aggressive in pursuing any goal that he may set for himself. The excellent record that he made during his seven years at the University of Illinois is evidence for this statement.

In my humble opinion, I feel that he would be a decided asset to the legal profession; and that he would be a very acceptable member of any group to which he would choose to seek admission. It is a pleasure for me to write this letter in Mr. Summers's behalf, and I shall be glad to answer any specific questions in his regard.

Very sincerely, Max T. Foster, Sergeant, Army of United States.

My home address is: R. P. D. #1, West Brooklyn, Illinois.

[fol. 75]

## EXHIBIT "I" TO PETITION

Sent direct.

4/27/43.

To whom it may concern:

I have been acquainted with Clyde Summers for five years. During that time we were both attending the University of Illinois until last spring when Clyde finished his work here. We first became acquainted at Wesley Foundation where both of us participated in the student program. During the school year of 1940-41 Clyde was president of the Student Council at Wesley Foundation. It was there that I noticed his abilities as a leader and organizer. But he did not limit his abilities to this small group for it was largely through him that Wesmen, a Wesley Foundation cooperative house for boys, became established for the following school year. Clyde and I lived in this cooperative house during the school year 1941-42 and during that time became very close friends. Our friendship has continued in correspondence since he left the house last spring. As a friend of Clyde I have had an opportunity to discuss various points of religious beliefs with him and thus to see what his views are.

We have discussed the theories of non-violence and its many phases several times always upon my quest for further knowledge of the theory involved—never upon his coming to me to try to convert my philosophy to that of pacifism. We have discussed various phases of Christianity and the place of non-violence in this religion. Various personal conversations have also revealed parts of his naturally conscientious cooperative character.

His theories had the chance to be thoroughly tested during the first year of existence of our cooperative house. During that year he was proctor of our house. It was his responsibility to see that our group abide by the laws of the university as well as those of the city in operating our organization. There were times when it may have seemed necessary to exercise forceful means to maintain order within our house. However, Clyde did not resort to these means but put his theories of non-violence into actual practice and they did work even though there were those who differed radically with Clyde's own point of view. There were those who did not feel the spirit of cooperation which was so essential to our house, but by

personal counseling Clyde brought these into harmony with the spirit of our house. When we found money being stolen, Clyde traced the theft and brought pressure to bear upon the individual who was guilty until the entire problem was solved without a display of violence on the side of either party. At the beginning of our exam period at the end of the semester Clyde posted a list of regulations for us to follow in the interest of all that quiet might be maintained at all hours during the exam period. These regulations were followed to the utmost and no resentment was taken to the strictness of them. The mere fact that he did solve these and various other problems, not to be handled by the group as a whole, proves to me that his ideas are compatible with law and order. Disagreement between Clyde's views and those of many of the members of our house never proved to bring about a great fissure in our group. Unity [fol. 76] of purpose existed throughout the year that he was proctor. By diplomacy and kindness he helped us in laying the foundation of our organization. At no time were we forced into any action. The constitution he helped frame for our house and his actions here have been in perfect harmony with his theories. I have noticed especially the consistency with which he has followed his beliefs yet at all times keeping an open mind.

Our personal discussions supplemented much of the material which I have investigated upon the conscientious objector's position. I have studied this position from the standpoint of a pre-theological student, having read various articles and books on the subject. While I do not hold the position of the conscientious objector and will soon be in military service, I feel that I do understand the philosophy of such a stand. In the light of these studies and our discussions together I feel that I thoroughly understand Clyde and his position. I have never felt that his theories would be in the way of his upholding the constitution of our country nor of carrying out its principles. I feel that Clyde is quite capable mentally and morally of fulfilling responsibility that the practice of law requires.

Dean A. Shinneman. \* President, Wesmen.

April —, 1943.

—, Notary Public.

[fol. 77]. [Endorsed:] No. N. R. 462. In the Supreme Court of Illinois. Clyde Wilson Summers, Petitioner, vs.

Committee on Character and Fitness for Third Appellate District, Respondent. Petition for an order upon the Committee on Character and Fitness for the Third Appellate District to certify petitioner for admission to the Bar of Illinois, and for an order for Admission to the practice of law in the State of Illinois. Motion by petitioner for an order upon the Committee on Character and Fitness for the Third Appellate District to certify petitioner, Clyde Wilson Summers, for admission to the bar of Illinois, etc. Filed Aug. 2, 1943. Edward F. Cullinane, Clerk pro tempore.

[fol. 78] STATE OF ILLINOIS,  
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of September in the year of our Lord, one thousand nine hundred and forty-three, within and for the State of Illinois.

Present: June C. Smith, Chief Justice; Justice Clyde E. Stone, Justice Walter T. Gunn, Justice William J. Fulton, Justice Francis S. Wilson, Justice Loren E. Murphy, Justice Charles H. Thompson; George F. Barrett, Attorney General; Warren C. Murray, Marshal.

Attest: Edward F. Cullinane, Clerk pro tempore.

Be it remembered, that, to-wit, on the 20th day of September, 1943, a certain letter was addressed to Mr. Horace B. Garman, 602 Millikin Building, Decatur, Illinois, signed by June C. Smith, Chief Justice, a copy of which is in the words and figures following, to-wit:

[fol. 79] SUPREME COURT, STATE OF ILLINOIS, SPRINGFIELD

September 20, 1943.

Mr. Horace B. Garman, 602 Millikin Building, Decatur, Illinois.

DEAR MR. GARMAN:

This Court has an elaborate petition filed by Francis Heisler, an attorney of 77 West Washington Street, Chicago, Illinois, on behalf of Clyde Wilson Summers.

The substance of the petition is that the Board should overrule the action of the Committee on Character and Fit-



ness, in which the Committee refused to give him a certificate because he is a conscientious objector, and for that reason refused to register or participate in the present national emergency.

I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

Yours very truly, (Signed) June C. Smith, Chief Justice.

JCS:k.

[fol. 80] And afterwards, to-wit, on the 20th day of September, 1943, a certain letter was addressed to Mr. Clyde Wilson Summers, % Francis Heisler, 77 West Washington Street, Chicago 2, Illinois, signed by June C. Smith, Chief Justice, a copy of which said letter is in the words and figures following, to-wit:

[fol. 81] SUPREME COURT, STATE OF ILLINOIS, SPRINGFIELD

September 20, 1943.

Mr. Clyde Wilson Summers, % Francis Heisler, 77 West Washington Street, Chicago 2, Illinois:

DEAR SIR:

Your petition to be admitted to the bar, notwithstanding the unfavorable report of the Committee on Character and Fitness for the Third Appellate Court District, has received the consideration of the Court.

I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

Yours very truly, (Signed) June C. Smith, Chief Justice.

JCS:k.

[fol. 82]

## UNITED STATES OF AMERICA

STATE OF ILLINOIS,  
Supreme Court, ss:

I, Earl Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and seal thereof, do hereby certify the foregoing to be a true copy of:  
1. Petition filed on August 2, 1943. 2. Letter to Horace B. Garman dated September 20, 1943. 3. Letter to Clyde Wilson Summers dated September 20, 1943, filed in this office  
— in a certain cause entitled in this Court.

Non-Record No. 462

In Re Clyde Wilson Summers

Witness: my hand and seal of said Supreme Court, in Springfield, in said State, this 22nd day of January A. D. 1945.

Earl Benjamin Searcy, Clerk: (Seal.)

[fol. 83] SUPREME COURT OF THE UNITED STATES

IN RE CLYDE W. SUMMERS

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR  
CERTIORARI

Upon consideration of the application of counsel for the petitioner,

It is ordered that the time for filing petition for certiorari be extended for a period of seven days, providing the time for filing such petition has not already expired.

Felix Frankfurter, Associate Justice of the Supreme Court of the United States.

Dated this 22d. day of June, 1944.

[fol. 84] SUPREME COURT OF THE UNITED STATES OCTOBER  
TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, Petitioner

ORDER ALLOWING CERTIORARI—Filed December 11, 1944

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted and the writ is ordered to issue.

[fol. 85] UNITED STATES OF AMERICA,

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Being informed that there is now pending before you a proceeding in which Clyde Wilson Summers has filed a petition for admission to the practice of the law in the courts of the State of Illinois, and we, being willing for certain reasons that the record and proceedings therein, or the papers upon which the court based its denial of the petitioner's application for admission to the bar, should be certified by the said Supreme Court of the State of Illinois and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the Supreme Court of the United States, the record and/or papers and proceedings in said cause, so that the Supreme Court of the United States may act thereon as of right and according to law ought to be done.

Witness the Honorable Harlan F. Stone, Chief Justice of the United States, the 18th day of December in the year of our Lord one thousand nine hundred and forty-four.

(Signed) Charles Elmore Cropley, Clerk of the Supreme Court of the United States.

[fol. 86] Endorsed on Cover: Enter Julien Cornell File No. 48,658 Illinois Supreme Court, Term No. 205. In re Clyde Wilson Summers, Petitioner, Petition for a writ of certiorari and exhibit thereto. Filed June 29, 1944. Term No. 205 O. T. 1944.

SUPPLEMENTAL  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1944**

**No. 205**

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**IN RE CLYDE WILSON SUMMERS, PETITIONER**

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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF ILLINOIS**

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**PETITION FOR CERTIORARI FILED JUNE 29, 1944.**

**CERTIORARI GRANTED DECEMBER 11, 1944.**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 205

IN RE CLYDE WILSON SUMMERS, PETITIONER

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF ILLINOIS

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[fol. a]

**IN SUPREME COURT OF ILLINOIS, SPRINGFIELD**

March 22, 1944.

Mr. Francis Heisler, Attorney at Law, 77 West Washington Street, Suite 1324, Chicago 2, Illinois.

In re: Clyde Wilson Summers

DEAR SIR:

Your petition on behalf of Clyde Wilson Summers to reconsider the prior action of the Court sustaining the report of the Committee on Character and Fitness for the Third Appellate Court District, has had the consideration of the Court.

I am directed to advise you that the Court declines to further consider its former action in this matter.

Yours very truly, June C. Smith, Chief Justice.  
JCS:K.

[fol. b]

**IN SUPREME COURT OF ILLINOIS**

**IN RE CLYDE WILSON SUMMERS, Petitioner,**

**STIPULATION AS TO SUPPLEMENTAL RECORD**

It is hereby stipulated on behalf of the petitioner in the above entitled cause, by his counsel, and the Chief Justice and Associate Justices of the Supreme Court of Illinois, by George F. Barrett, Attorney General of the State of Illinois, that the Clerk of the Supreme Court of Illinois shall prepare a supplemental record in the above entitled cause and that in such record he shall include the following:

1. The original of the transcript of the proceedings in the Matter of the Application of Clyde Wilson Summers for admission to the Bar of Illinois before the Committee on Character and Fitness for the Third Appellate Court District.

2. A photostat of the letter under date of March 22, 1944, from June C. Smith, Chief Justice of the Supreme Court of Illinois, to Francis Heisler, counsel for

the said Clyde Wilson Summers, the body of which letter reads as follows:

"Your petition on behalf of Clyde Wilson Summers to reconsider the prior action of the Court sustaining the report of the Committee on Character and Fitness for the Third Appellate Court District, has had the consideration of the Court.

[fol. c.] "I am directed to advise you that the Court declines to further consider its former action in this matter."

3. A certificate that the foregoing transcript is the original and that the photostat is a true and correct copy of a document of the Supreme Court of Illinois.

Francis Heisler, Counsel for Petitioner, Clyde Wilson Summers. George F. Barrett, Attorney General of the State of Illinois, Attorney for the Chief Justice and Associate Justices of the Supreme Court of Illinois.

[fol. 1] In the Law Offices of Vail, Mills & Armstrong  
Eleventh Floor, Citizens' Building,  
Decatur, Illinois

Application of Clyde Wilson Summers for Admission to  
the Bar

Hearing at 10:30 a. m. Friday, November 27, 1942, before the Committee on Character and Fitness for Third Appellate Court District on the application of Clyde Wilson Summers for admission to the Bar.

Members of the Committee Present: Mr. Walter Belatti, Jacksonville, Ill.; Mr. Horace B. Garman, Decatur, Illinois; Mr. Robert P. Vail, Decatur, Illinois. Benj. F. Cassidy, Room 201, Court House, Decatur, Illinois, Official Circuit Court Reporter.

CLYDE WILSON SUMMERS, called, a witness on his own behalf, having been first duly sworn, was examined in chief by Mr. Vail, and testified as follows:

Q. State your name.

A. Clyde Summers—Clyde Wilson Summers.

Q. Are you the same person who has filed a question-aire before the Character and Fitness Committee for the Third Appellate Court District of Illinois in connection with your application for admission to the bar?

[fol. 2] A. Yes, sir.

Q. And after filing that question-aire did you appear before any member of the committee?

A. Yes, sir. Mr. Belatti.

Q. Mr. Belatti?

A. Yes, sir.

Mr. Vail: Well, now, Mr. Belatti, I think you can take the examination in charge.

Examination.

By Mr. Belatti:

Q. What is your age?

A. I was twenty-four last week.

Q. Where were you born?

A. Grass Range, Montana.

Q. How many years did you live in Montana?

A. About three and one-half years.

Q. And after that did you move to Illinois?

A. No, sir. We moved to Tecumseh, Nebraska.

Q. How long have you lived in Illinois?

A. Since 1929.

Q. During all of that time or period have you lived in Scott County, Illinois?

A. Yes, sir.

Q. In the city of Winchester or adjacent thereto?

A. Two years I lived in Winchester and then the rest of the time on a farm about seven miles from Winchester.

Q. What college did you attend?

A. The University of Illinois.

Q. You took your law work there also?

[fol. 3] A. Yes, sir.

Q. Did you specialize in any other work besides law?

A. I have a Bachelor of Science in Accountancy before I went into the Law.

Q. What is your religious affiliation?

A. Methodist.

Q. Have you been connected with that Church all of your life?

4  
A. As far as I can remember.

Q. And you have been active in that work?

A. Yes, sir.

Q. What special religious work did you do at the University of Illinois?

A. I worked in the Wesley Foundation. I was Chairman of Religious Education; Chairman of the Worship Committee; and Vice-President of the Council; President of the Council; and Student Assistant for the Minister. That is, in successive years.

Q. Did you do any preaching yourself? That is, actually conducting the services and preaching sermons?

A. Yes, sir. I led Worship Services. That was not preaching regularly—preaching regular sermons there, but I have preached a number of sermons other places, but none there.

Q. Did you largely work your way through college and law school?

A. Almost entirely. My Dad gave me about two hundred dollars altogether.

Q. What kind of work did you do to earn your money to have your education?

A. The first four years I worked meal jobs when I could [fol. 4] get them, and N. Y. A., working—washing windows and running elevator; the last three years in law school I worked one year in the University Accounting Office, two years in the University Accounting Office and one year in Wesley Foundation.

Q. The last year was connected with the Wesley Foundation?

A. The last year, yes, sir.

Q. Are your Father and Mother both living?

A. No. My Mother has been dead since 1929.

Q. What kind of work did your Father do?

A. He was a farmer.

Q. Have you any Brothers?

A. One.

Q. He is in Military Service?

A. Yes, sir, he is. I guess he is a Captain now in the Coast Artillery, at Camp Wallace, Texas.

Q. You are not married?

A. No, sir.

Q. You have never been married?



A. No, sir.

Q. And you registered in the First Draft?

A. That is right.

Q. I believe and when you returned your question-aire you in that connection stated that you were a conscientious objector to war?

A. Yes, sir.

Q. And have you maintained that position ever since?

A. Yes, sir.

Q. How did the Draft Board classify you in that regard?

A. They classified me as a conscientious objector at first [fol. 5] and then they decided since I was a student, they had to classify me as a student until the end of the year, and then they classified me as that until June, and then they put me back in as a conscientious objector. They never questioned me or anything. They classified me as that.

Q. Do you know what number that is?

A. Yes.

Q. The numbered classification?

A. 4-E.

Q. 4-E?

A. Yes, sir.

Q. In connection with that classification are you subject to a physical examination?

A. Yes, sir.

Q. Have you taken a physical examination?

A. I had a physical examination a year ago this Summer. I did not pass. Otherwise I would be in the camp now.

Q. Is that the same kind of physical examination that is given to those inducted into active service?

A. Yes, sir. It is supposed to be. As a matter of fact on the draft question, the local board would become the only board and the one board to put me in the service.

Q. In that connection you have not been called into any service?

A. That is right.

Q. Do you have any idea when you might be called?

A. I have no idea. If the conscientious objectors are called along with the others that are fit for limited services with the military forces, according to the schedule I should be called some time about February. I do not know whether they are calling the conscientious objectors fit for limited [fol. 6] service or not.

Q. Now, is conscientious objecting to war one of the fundamental principles of the Methodist Church with which you are affiliated?

A. The Methodist Church in its national conference said that they would uphold and support the conscientious objectors and also conscientious participants, so they are—you might say—supporting both sides. But it is recognized by the Church as a valid stand.

Q. However, from what you say, I gather that at least the Church has not taken the position that it is one of the fundamental tenets of the religion?

A. No, sir.

Q. That a person must not engage in combat activity?

A. That is right.

Q. And it is not in the same category as the Society of Friends or some other such world faith as a cardinal tenet?

A. No, sir. There are Quakers that are in the Military Service as well as Methodists.

Q. The disposition which you have taken in regard to the Military Service, the participation in War, your conclusion in that regard, did that result from your own independent reasoning or from your religious training?

A. It was from my reasoning through my religious training. I can't really separate the two. I did my own thinking and then I had a lot of things on the religious side too, but it was through the religious point of view.

Q. I gather that it is by no means the result of any family thinking?

A. No, sir. That is right.

[fol. 7] Q. Do you believe you have any constitutional right to refuse to serve in the Armed Forces?

A. The Constitution makes no provision for conscientious objectors. I think that the Illinois Constitution has some provision concerning militia about it.

Q. Don't you believe, Mr. Summers, it is the duty of the Federal Government to defend your life and property even by armed force, if necessary?

A. Will you state that question again, please? I want to be sure about it.

Q. Don't you believe it is the duty of a just government to defend your life and property even by armed force, if necessary?

A. Not military force at least. It is not its duty to do so. It is its duty to defend it, but not necessarily by military force.

Q. Isn't it only by the grace of Congress that you are afforded the right to claim an exemption or deferment or whatever it may be on the ground of your conscientious objection?

A. Yes, sir.

Q. Now, in spite of this great emergency Congress has protected you in that right?

A. But not because it has to.

Q. The Government protects you, an obscure citizen in the exercise of that right, doesn't it?

A. Yes, sir.

Q. Don't you think that kind of a Government is entitled to be defended by force, if necessary, and isn't it worth defending?

[fol. 8] A. It is worth defending, but the question is whether the force is either a good defense or the best defense.

Q. Do you think that God would want the civilization of the United States to be overthrown and the Japanese or the Hitler ideas, because I won't call it "civilization", to be substituted therefor?

A. I think that would hurt God greatly. Also I think that our killing people hurts too.

Q. You do not think then that God would approve—no, you do think that God would approve of our failure to use the instruments he has given us to prevent that outcome, that is, the overthrow of our civilization by the Japanese or by Hitler?

A. What do you mean by the "instruments that he has given us"?

Q. Well, the ability to produce arms and to use them?

A. No. I do not think God desires that of them.

Q. Well, I say, you do think he would approve of our failure to use them?

A. No. He would not approve of our failure—wait a minute! Let me state it positively: He would approve of our failure to use them if we use the other means which we have available. He does not approve of anybody surrendering and giving in. It is solely what means which he approves.

Q. Well, perhaps we need to be enlightened on that point. What are the other means which may prevent that outcome other than the instrumentality of force?

A. Those are the means of non-violent resistance or non-cooperation, or using love to overcome the evil. Perhaps the best example in the world today is Ghandi.

[fol. 9] Q. I just want to get your point. I am not going to argue it.

A. Yes.

Q. I just wanted to know what they were.

A. Yes, sir.

Q. I did not know whether you mean that sort of thing or whether you thought there were some economic force that might operate, that is, psychical forces that might operate?

A. Yes. I think now we have to think about some economic changes and adjustments, however.

Q. Do you seriously believe that such means could prevent at least initially the overthrow of all that our civilization stands for?

A. Not the initial overthrow, but it would win in the end.

Q. You believe in using no force, which might result in ultimate death, in order to protect the Government which accords the humblest citizen to the humblest citizen his freedom and his rights of person and property?

A. I do not believe in any force that requires the taking of human lives.

Q. I say, that is what you believe?

A. Yes, sir.

Q. You do feel, however, that our national existence initially would be injured by the triumph of our enemies, do you not?

A. Yes, sir.

Q. You have no idea how many years, how long a period of time would be required to emerge from the darkness?

A. I do not know, but I believe it would be much quicker than the way we are doing.

[fol. 10] Q. You do realize that our liberties would be taken away in the event of that victory by our enemies?

A. Yes. They would.

Q. And have been taken away in Germany, Czechoslovakia and Poland?

A. Yes. They would.

Q. Especially the liberty of the Jews?

A. One can not be too sure they will not be taken away as it is.

Q. To what extent do you believe that our people would be enslaved?

A. To the extent that they allowed themselves to be enslaved.

Q. That is where we are getting now—to the border line, where I can not quite understand. How can they prevent themselves from being enslaved, except by the use of force?

A. By simply the refusal to follow the dictates of uncivilized forces. It seems to me that the enslavement of people comes in the enslavement of their spirit and willingness to put up with things like that, and not the kind of enslavement as we might think about, taking our liberties away. As long as men are spiritually right, they can never be the slaves of anyone.

Q. Don't you believe your very right to refuse to fight would be taken away?

A. I might suffer great consequences.

Q. Your right to do so would be taken away from you?

A. Yes. The legal right.

Q. Your legal right, yes. The only way you could refuse to fight would be to suffer the violence toward you, or the death they might impose upon you?

[fol. 10a] A. Yes, sir.

Q. And you realize that if everyone in the nation would have taken your position since Pearl Harbor, your rights and freedom would have been lost?

A. They would have been lost but they would come back.

Mr. Belatti: I wonder if you other gentlemen do not have some questions along that line for I at least do not want to encroach on your idea. You may ask about it or let you do your own questioning. I am willing to following your suggestions. Do you wish to ask some questions or do you want me to?

Mr. Garman: Go ahead. I will ask the questions I want to ask.

Mr. Belatti: Yes, sir. You might go into the things you want to.

Q. In your association and such at the University of Illinois you doubtless met many acquaintances both in College and in the Law School?



A. Yes, sir.

Q. And quite a number of those men are fighting now in the armed forces?

A. Yes, sir. My best friends, probably in Africa.

Q. You do not believe your conscience would permit you to give your the privilege of fighting side by side with them?

A. They did not ask me that.

Q. It is not a question of what they would ask.

A. Maybe not strictly.

Q. It is a question of what your own conscience, emotions and feelings lead you to feel you ought to do?

[fol. 11] A. No, sir. My conscience does not feel I should do it.

Q. What would you do if they did speak and ask that of you?

A. I should continue in what I thought was right.

Mr. Belatti: Well, Mr. Chairman, I admit that my knowledge and even my thought along these lines has been rather perfunctory and inadequate. I am afraid that is about all I have to ask Mr. Summers.

Mr. Vail: All right. Let Mr. Garman ask him if he cares to.

#### Examination.

By Mr. Garman:

Q. You referred to your best friend being at War?

A. I think he may be in Africa.

Q. Who is that?

A. Harold Clark. He graduated in law a year before me. The last I heard of him he was in England.

Q. Now, you say that if your friends and associates who are in the Service were to ask you to join them, you would continue to do what you thought was right. What do you think would be right?

A. The thing I am doing now, as nearly as I am able to do it.

Q. Mr. Summers, if you were in a position where one of those friends of your in your presence was being attacked by a superior foe, either in the army or out of the army, wouldn't you exert any efforts or any force I should say at all to protect him?

A. I would be willing to take the blows that were meant for them.

Q. Well, would you expect the person who was attacking him to accept your invitation to come over and hit you in [fol. 12] stead of him?

A. It would not be a case of that. It would be a case of my putting myself between the two.

Q. Yes. But that is the only effort that you would make to protect him?

A. Isn't that enough?

Q. That is not answering my question.

A. It would be as much as I would be—it would be as much as I could do.

Q. Well, it might be within your power to take the gun away from the man that was to be fired at your friend?

A. Disarming would be practical. Disarming him would be practical.

Q. And that would be using some force, wouldn't it?

A. It would be using restraint—not destruction.

Q. It would be using force, wouldn't it?

A. Yes, some.

Q. And if in the struggle to get the gun or to protect the friend, if you finally reached the point where it was the lives of the two of you, you and your friend, or the foe, you would willingly see both your life and your friend's life sacrificed rather than take the life of the foe? Would you willingly see both your life and your friend's life sacrificed or would you take the life of the foe?

A. I am willing to sacrifice my own life.

Q. And your friend's life too rather than to take the life of the foe?

A. Yes. But what has that to do with practicing law?

Mr. Vail: You are here to answer question. Not to ask them.

Mr. Garman: Well, let us talk about law a little bit.

[fol. 13] Q. In the practice of law it sometimes becomes necessary to use force, doesn't it?

A. That is a police force—not military force.

Q. What is the difference between them?

A. One is bent on restraining people and prevention, and the other is bent upon destruction. One is bent on re-

straining violence, saving people who have committed crime and not to kill them off.

Q. Sometimes in the enforcement of the law, a mob attacks a jail, doesn't it?

A. Yes.

Q. Now, call it police power or military power, whatever you will, it is the duty of the jailer to protect the prisoners, isn't it?

A. Yes, it is.

Q. Isn't it his duty to protect them even though he must injure some of the people who are bent on the attack?

A. Yes. He has assumed that duty.

Q. That is a part of our system, isn't it?

A. A part of our feeling, yes.

Q. A part of our system of law, isn't it?

A. Yes.

Q. Now, that is the system of law, that you wish and are willing to take an oath to support, isn't it?

A. Yes.

Q. And you recognize the fact that sometimes it is incumbent upon us in the administration of that law to use force and sometimes to take life? Don't you know that? And as a citizen of this country that you can be called upon to assume police power, even involuntarily, under certain conditions?

[fol. 14] A. Yes, sir.

Q. And isn't it a part of our system that you should do so?

A. Yes, sir. It does not necessarily mean to kill a man.

Q. It might.

A. I would go as far as I could, but when it came to killing a man, I could not do it.

Q. You would let the men rush the jail and take the prisoner out and hang him rather than do it?

A. They would have to hang me first.

Q. It is not necessary to kill you. The man is in jail.

A. It would be as the old saying is, "over my dead body".

Q. He ties you, walks past you, takes the keys and takes the prisoner out and hangs him. You would go Scott Free?

A. Yes.

Q. Well, that is so obvious, Mr. Summers.

A. But it would be a case of keeping myself in a position where they could not do it. It would be a case of my own eye; it would be a case of throwing the keys away or whatever is necessary. Or course, then, there are spiritual

forces. Again love. Some of the missionaries in China have proved them against the Japanese. They have been able to stand for every violence and fighting back there.

Q. You have heard those stories?

A. Yes, I have.

Q. You have not been present under those conditions?

A. No. Have you ever been present in a mob?

Q. No, I have not. (Whereupon Mr. Vail left the room to answer a long distance telephone call) Let's wait until Mr. Vail comes back.

[fol. 15] Mr. Vail: I was sorry to interrupt. That was a long distance call. I thought I would take it.

Mr. Garman:

Q. Mr. Summers, you say you were classified as a conscientious objector by the Draft Board, which conducted no hearing in the matter?

A. Yes, sir.

Q. They accepted your own statement as a conscientious objector?

A. Yes, sir.

Q. Now, what physical defect have you that would prevent you from being called to Camp?

A. A hernia.

Q. Have you considered having the hernia corrected?

A. I have considered it, but where is the money and the time?

Q. Well, now you were educated at a state institution, were you not?

A. Yes, sir.

Q. Where the cost of your education was to a considerable extent paid out of public funds?

A. Yes, sir. And my Dad paid taxes too.

Q. Yes, and as a employee of the N. Y. A. you received public assistance?

A. Yes, sir.

Q. For which you worked?

A. Yes, sir.

Q. Now, you did not feel that you were asking too much of your state to educate you, did you?

A. No, sir.

Q. Would you feel it was asking too much of your state [fol. 16] to defray the cost of a hernia operation in order

that you might carry out such duties as might fall to your lot under the present conditions?

A. I would be willing to, but they have never offered it.

Q. You have asked them?

A. No. I have not asked them.

Q. Now, you are employed at the present time, are you not?

A. Yes, sir.

Q. And where are you employed?

A. The University of Toledo, teaching law.

Q. How long have you been teaching there?

A. Since September.

Q. Are you a new—are you an addition to the faculty that was already constituted?

A. No, sir. There were men that went to Washington to get jobs, and they needed another man.

Q. Where is the man whom you replaced?

A. He is in Washington. I do not know just exactly what Department he is in there. He is Dix Noel. As nearly as I am able to figure out, that is who I replaced. They had four full time men last year and they have only three full time men this year.

Q. So far as you know now you will not be called for any kind of duty whatever unless your physical defect is corrected?

A. So far as I know, they will call me in spite of it. I expect to be called, but I do not know.

Q. If that were corrected, you would be called shortly?

A. Probably as soon as it healed.

Q. Now, you have referred to other methods of force [fol. 17] which might be used in combating a foe. What methods do you have in mind?

A. The method of non-violent resistance.

Q. Would you tell us what they might be?

A. Where that is, as when there is something that you oppose, whether it be force or otherwise, to refuse to co-operate, to hold yourself open to having it corrected, assuming the blame for which you are responsible, refusing to hate those, regardless of the fact that they are using force against you, and in that refusing to hate, make them realize that there is really no hatred between you.

Q. You have no idea that those methods might be effective?

A. I believe they will. I am willing to bet my life on it.



Q. Now, I wonder, because your life is not in danger.

A. Well, insofar as I am able to tell, I am willing to bet my life on it.

Q. What are some of those methods that might be used under present conditions?

A. Have you read anything about Ghandi?

Q. I am asking you. I want you to tell me. I will tell you in advance I have read considerable.

A. It is a case.

Q. I just want you tell me what you have in mind to use under present conditions?

A. Under present conditions, if the people of this country desired it, they could.—

Q. No, no: Tell me what you suggest under present conditions?

A. Under present conditions I would suggest I do as I am doing, standing for these principles, even though the rest of the people are not willing to go along; and various [fol. 18] people are not willing to go along, they know no other way, they must fight.

Q. You are not answering my question at all. I am talking not about you individually but as a nation, how might we find out what methods you would suggest of non-violent resistance?

A. Assuming all could believe as I do?

Q. You can assume anything you want to.

A. If all of the country believed as I do, it would be a case of not relying in any respect on the military; it would be to make the food of the country available to the hungry, bare the responsibility for the creation of this War, willing to assume that responsibility and correct the conditions as they are. I mean correct the conditions to be what you think they ought to be.

Q. Well, to what extent does that amount to resistance?

A. It is resistance, the most violent kind of resistance.

Q. Resistance to whom?

A. Any forces that are against us.

Q. It is resistance to our own Government.

A. No. It is not a resistance to our own Government, because I am assuming that is the policy of the Government. You said to make such assumption I like.

Q. Yes, sir.

A. That is what I am assuming, that that is the policy of our Government. In that way, we could correct it.

Q. Then, that would entail our using no force of any kind against a foe?

A. The using of spiritual force.

Q. Prayer?

A. Yes.

Q. And what else?

[fol. 19] A. Love, good will, friendship, regardless of how men treated you.

Q. Even though that might disintegrate the whole nation to the last man?

A. If it does, it would still be right, but I do not believe it would.

Q. That is your own opinion?

A. That is my own opinion.

Q. It is not the teaching of your Church?

Q. Well, there are a lot in my Church that believe the same way as I do.

Q. There is no teaching in your Church of that nature?

A. My Church has no teaching on the subject. It has taken both sides. It is the teaching by a Methodist like Earnest Termini.

Q. Does the Methodist Church have a creed?

A. Yes.

Q. It is not a part of that creed, is it?

A. Oh, there are many things that the Methodist Church stands for that are not in the creed.

Q. How are we to determine what they stand for as a unit?

A. The things they adopt in their conferences every four years as their policy.

Q. Now, have they ever adopted a policy of non-resistance?

A. They have said it was a valid method for their Church.

Q. They have not adopted it as a policy of their Church?

A. No, and have not adopted War as a policy either.

Q. Would you advocate the use of such non-specific methods against the foe as a blockade?

A. Not a food blockade or armed blockade.

[fol. 20] Q. Would you feed their hungry?

A. I would feed their people.

Q. You would feed their people even though they might be in the Army?

A. Yes.

Q. We know today that the German people are badly underfed.

A. Not as badly as the rest of Europe.

Q. Just answer my question, Mr. Summers. We will get along much faster I really imagine.

A. I can already feel like you are trying to force me into a hole without a full statement of what the conditions are.

Q. No. You have an opportunity to state everything you want to state, but we would like to know.

A. Very well. I will save it until then. I just wanted to be sure my position is clear, that I am not put in a hole.

Q. The point is, you would feed the German people, including the German Army?

A. Yes, sir.

Q. The Japanese as well?

A. Yes, sir.

Q. And your theory being that if you fed them they might relent and lay down their arms and be Brothers?

A. Eventually, yes. That with other things I mean. Feeding alone is not enough.

Q. You realize too that the legal system that is now in force in Germany is different from our own?

A. Yes. And it is very bad.

Q. But you would submit, if necessary, to that legal system?

A. Not submit. I would not use violence.

Q. You would not use violence to protect the legal system you have?

[fol. 21] A. No, sir.

Q. You do not feel that the Common Law under which we live is worth defending by force?

A. It is worth defending by force, but the force will not work.

Q. That is it won't work over a long period of time?

A. It is worth everything we can give.

Q. If won't work you think over a long period of time?

A. That is right.

Q. We might defeat our foes and preserve our system, but that would not be worth while?

A. Not if it meant losing—it would not be worth while because it would mean losing them eventually or injuring them again eventually.

Q. Well, are you sure of that?

A. Well, I am willing to bet my life on it.

Q. In what way are you willing to gamble your life on it?

A. I am willing to following the course I have stated, regardless of the consequences.

Q. Well, so far as you can see into the future, there is no danger then of your losing your life in that contest, is there?

A. I do not see any.

Q. So that you are wagering your life when it is not taking very much of a chance?

A. It is a question very much of a chance when I have to go through this kind of an ordeal.

Q. I hope you will not feel this is an ordeal, but it is an unusual situation.

A. I have only found one case to parallel it.

[fol. 22] Q. No doubt. What case was that?

A. In re: Sullivan in Montana. Only he was a religious objector. He just said, if they want me to fight, they will have to come after me. I will not wear a uniform.

Q. Have you read any other cases?

A. I have read all cases that might give me a lead, but I never found any cases parallel with that. They found in favor of that lawyer. He did not lose his Bar privilege.

Q. Well, at the basis of your contention is Brotherly love, absolute unselfishness, negation, and unreasoned right?

A. Yes, sir.

Q. Unreasoned privileges?

A. Yes, sir.

Q. Don't you think it is a little unselfish—strike that. Don't you think it is a little selfish, under present conditions, to take the work of those who are defending the system that makes that work available?

A. What do you mean?

Q. Just read him the question.

(Question read.)

A. You mean do I think it is selfish for me to refuse to fight when there are others fighting in order to preserve this system?

Q. No. That is not the question.

A. I mean—

Q. A very substantial number of the lawyers you know, lawyers and law teachers, are today actively fighting.

They fight to protect and to preserve our way of life?

A. Yes.

Q. And our institutions in this country?

[fol. 23] A. Yes.

Q. They have sacrificed their jobs and their property to do that. Now, is it selfish or not for a man who refuses to fight to step into the place of one of those who has gone to fight?

A. I am getting two hundred dollars a month. I am saving one hundred dollars of it in order to pay my expenses when I go to Camp. I do not think that is being too selfish.

Q. It is a little bit selfish, isn't it?

A. I have no other choice than to go to Camp, and then I would be a burden on those behind me. I have no other source except to support myself.

Q. To what extent do you support yourself?

A. Entirely, thirty-five dollars a month from his immediate family, friends, the Methodist Church, ~~as~~ as it happens now, the ministers of the Quakers, they have to support them with at least thirty-five dollars a month. I do not feel like pushing myself as a burden off on them, just to make it look like I am being doubly consistent. It would be rather a zero sort of thing to do.

Q. Let me ask you what you have—or have you read considerably on the question of pacifism and non-resistance?

A. A lot, yes.

Q. What have you read?

A. The best book is Gregg's "Power of Non-violence", and Gregory's "New Testament Basis of Pacifism". The Fellowship Magazines themselves, put out by the Fellowship Reconciliation. And lots of articles in the Christian Century about it. Kirby Page's books. I do not know how many of them there are of his. Well, just particularly [fol. 24] about everything I could get my hands on, except one thing I wanted to read that I have not been able to get my hands on, Shidharami's "World without Violence". I believe that is how it is titled.

Q. Who is he?

A. He is one of Ghandi's followers.

Q. He is in India now?

A. He was travelling around this country the last I heard.

Q. Have you ever heard him speak?



A. I have not heard him speak.

Q. Now, all of the people who wrote those books advocate non-violence?

A. Yes.

Q. That has been the thing?

A. Yes, sir.

Q. That is Kirby Page's thesis, is it?

A. Yes.

Q. Is it his thesis today?

A. I have not heard him speak for almost a year. I could not say. I have not heard that he changed his position.

Q. If you had heard he changed his position, would that make any difference to you?

A. No, sir.

Q. If all of those people whom you referred to, all of those authors changed their position, in the light of present conditions, would that make any difference to you?

A. Well, if all of them changed, I would certainly look into my position, but the result, I could not say.

Q. You would not change your position for any other reason?

A. I would read them. I would not go hopeless but I [fol. 25] would look and see. I mean I have not re-examined them wholesale in the last two years. Whenever an issue came up, I looked at it and re-examined it as much as I could, and whether I was right or wrong on that point.

Q. Now, can you decide those things definitely if you are right or wrong on points such as these?

A. No. No, I can't decide definitely.

Q. But you are simply willing to resolve the doubt in favor of non-violence?

A. No. It is not resolving my doubt in anybody's favor. It is just simply it overcomes all of the doubts. It is not uncertain. It may be wrong but it is the best I see now.

I might tell you that six months before I took this position, I thought that War was thoroughly justified. I did not even know there would be a defensive war. I guess I read too much of the New Testament. I came to the conclusion, whether I like it or not, my previous conclusions were *were* wrong.

Q. Well, in six months you have changed your mind?

A. Yes. It might have been seven.

Q. What caused you to change it in that period?

A. Before that time I had not gone to Church regularly. I was in school but I had not gone to Church regularly. I started to going to Church regularly, and that was one thing, because it made me to think. In the second place, I went home in the Summer time. I had lots of time to think. I read the Four Gospels I guess a little too much. I just was compelled to come to that conclusion. I had no other choice.

Q. Well, isn't that a pretty short time and a pretty free consultation with the Gospels to change your mind on such a [fol. 26] matter as this?

A. I have been thinking about it ever since.

Q. Well, but you changed your mind?

A. Yes.

Q. In that short period?

A. Yes. But I think I consulted the authorities adequately. I think the New Testament is enough.

Q. Well, what did you read from the New Testament that convinced you?

A. "Love your Enemies", "Do Good to those that Hate You", "Even thought your enemy strike you on your right cheek, turn to him your left cheek also", about the cloak, and he who would compel you to walk a mile, go with him too, and then the man that died on the cross because He refused to use force.

Q. Is there anything in the New Testament that caused you any doubt?

A. Oh, there were a few things. It is Jesus using cords on cattle and driving them out of the Temple. Oh, I mean they bothered me but it was totally overcome by the way to live, and then I read and investigated and found most of the authorities agreed, in the first place, that the incident is not particularly reliable report; in the second place, he only used them on his cattle; in the third place, it was a perfect example of non-violence because he as one person stood against the whole nation and they obeyed.

Q. He did use some kind of force to drive the money changers out of the Temple?

A. He drove the cattle out.

Q. Didn't he drive the money changers out of the Temple? [fol. 27] A. He drove the cattle out. That is as far as he would go.

Q. What did the bible say? Did it say he drove the cattle out?

A. I can not quote the bible exactly, but the real translation was, the best translation is the Greek, from which it came, says he only used it on cattle. In the second place, it only appears in the Gospel of John. It does not appear in any of the other three, and it is a question as to whether he really did it that way at all. It says, he cast them out, but under the translation of the Greek, that means he sent them forth.

Q. Are you a Greek student?

A. No, sir. But I have friends who are.

Q. You had to take their word for it?

A. Yes, sir. Pretty much.

Q. And they agreed on it?

A. As nearly as I can find out.

Q. And any St. James' version is not correct?

A. It is not infallible, no.

Q. Then, you have ignored, of course, the Old Testament entirely?

A. No, sir. Not entirely. I am afraid if I followed the Professors I knew, I would be in a mess.

Q. In other words, you would accept those things in the Old Testament which support your position, and the things that do not support your position, you reject? That is true, isn't it?

A. They were all true, but the Old Testament is a history of a people learning to know their God. It is a history of their growth, a knowledge of what was right and wrong, and Jesus was the fulfillment of that.

[fol. 28] Q. And He was the fulfillment of that struggle that these people went through, even sometimes resulting in the engagement in violent War?

A. Yes, but when He came he said, not to use—not to do that way. He said, you have heard that old time saying, an eye for an eye and a tooth for a tooth, but I say a man who is angry with his Brother is in danger of Hell fire; in other words, he more than added it up. He added something.

Q. I wanted to get your views on it. You do have to reject all of the teachings—all of the reports and teachings in the Old Testament which would support violence, don't you?

A. To reject them in the sense I say it is not the best life a man could have. It is what those men believed to be right at that time.

Mr. Vail: Well, I have a number of questions I would like to ask Mr. Summers. Shall we proceed now? It is almost noon.

Mr. Belatti: I would very much like to get the one forty-five train or bus, if I could.

Mr. Vail: Let us proceed then.

### Examination.

By Mr. Vail:

Q. You are teaching law now, Mr. Summers?

A. Yes, sir.

Q. And have been this term?

A. Yes, sir.

Q. Are you older or younger than your Brother?

A. Younger.

Q. How much?

[fol. 29] A. Five years.

Q. Well, is he at home most of the time when you are up to the last two or three years?

A. No. He really left home in 1931, when he started to school, and then he was only home occasionally since then.

Q. So that you have not seen much of him in the last ten years?

A. No. Not a great deal.

Q. Now, do you have any other Brothers or Sisters?

A. One Sister.

Q. And is she married?

A. Yes, sir.

Q. Is her husband in the Service?

A. No, sir. He is a farmer. They have one child, and he has a weak heart.

Q. Now, if it were suggested by the Board, the Draft Board, that since you are a conscientious objector, you go into the Hospital Service and not carry any arms but help carry the wounded men off the field, help care for them, would you be willing to do that?

A. As long as I was not subject to the military authorities. The Quakers are doing that kind of work, are trying to, if the Government would let them. I would be perfectly willing to do it under them.

Q. What is your objection to doing it under the military authorities, if you do not have to fight?

A. I think the whole military system is wrong. I would prefer not to have a part in it.

Q. You would be unwilling then, under military authority, where you did not have to bear arms, to help carry the [fol. 30] wounded off and serve in the hospitals?

A. I am afraid so, but it is not because I do not feel for those people.

Q. Why would it be? You do not want to do it?

A. Because I do not want to do it under military authority.

Q. What has that to do with it?

A. Because I am a part of the whole machine which is aimed at the destruction of other people.

Q. You are willing to refuse to save life because somebody may connect you with somebody that takes life?

A. There are other ways of saving.

Q. Answer my question.

A. I do not mean foregoing the saving of life, but I do not want to be a part of something that is the cause of destruction.

Q. Did you and your Brother have any fights?

A. When we were kids we fought a lot and my Sister to, but we have not recently. It might interest you to know that last year he wrote me and said he hoped one thing, that this War would never come between us, because he said, you go your way and I will have to go mine, but we will meet on the other side of the world some day.

Q. Do you expect to get married, Mr. Summers?

A. I hope to if I could ever find a woman.

Q. Suppose you were married and walked down the street and some bully came and started to beat up on your wife, what would you do?

A. Take the punishment myself.

Q. He jumped on her, what would you do? Interfere?

A. Put myself between them.

Q. Is that all you would do?

[fol. 31] A. I would do that. That is the most I could do.

Q. That is the most you could do?

A. I could absorb all of the punishment myself and that is enough.

Q. You would let your wife take what violence came to her when you could prevent it?

A. She could get away while he was beating me up.



Q. Suppose you had a child and a wife and some fellow came around your house with a revolver and threatened to shoot. What would you do? Just stand in the way and be shot?

A. That would be one way.

Q. Would you do that?

A. Certainly.

Q. What you do anything else?

A. If I had a good chance I would throw a robe or gunny sack over his head and take the gun away from him.

Q. Suppose you did not have a chance to do that?

A. I suppose that is the most I could do.

Q. If you had a brick in your hand, do you think you would throw it at him?

A. I do not think Jesus would want me to do that.

Q. I did not ask you about Jesus. I am talking about you.

A. I would try not to do it.

Q. You would let him shoot your wife rather than throw a brick to save your wife and your child. You would let him shoot your wife and your child rather than throw the brick?

A. Yes, because I believe that is what Jesus asks for me to do.

Q. Do you know you would be an officer of the Court if [fol. 32] you were admitted to the Bar?

A. Yes, sir.

Q. Suppose you were appointed to defend someone who is indicted for murder?

A. I would defend him.

Q. And his defense was self-defense, even though he was a man—

A. I would have no duty but to say that is what the law provided. I could defend him as the law provides.

Q. You would do that even though you did not believe it?

A. Certainly.

Q. What did you study in College before you went to law school?

A. Forty hours of accountancy, twenty-three hours, economics, twenty-three hours of political science, and then miscellaneous things that they required.

Q. Did you have very much history?

A. Three hours.

Q. What did you study?

A. English history.

Q. A general survey?

A. No. It was from the beginning of England down to Queen Elizabeth, I guess.

Q. Did you have any philosophy at all?

A. No, sir. Of course in logic, but it is not real philosophy.

Q. How long have you been reading these writers that you have spoken of awhile ago who advocate non-resistance and pacifism?

A. Nearly four and one-half years.

Q. Four and one-half years?

[fol. 33] A. Yes, sir.

Q. You started when you were eighteen or nineteen years old?

A. A junior.

Q. Eighteen or nineteen years old?

A. Yes.

Q. Did you read anything on the other side?

A. I read a plenty of things on the other side.

Q. What for instance?

A. Bennett has a book—John Bennett. I have forgotten what the name of it is at the present time. He is on the other side. I have read parts of Folly in New York City. What is the name? He wrote Moral Man—Immoral Society. Rheinhold Neber. Moral Man—Immoral Society.

Q. He is a Communist?

A. No. He is a minister.

Q. Didn't you know he was a Communist?

A. I never heard of it—not Neber.

Q. Did you read any of his books on Russia?

A. No, sir. I have not.

Q. Do you know whether he wrote about Russia or not?

A. I do not know of anything if he did.

Q. Do you believe in Hell?

A. Can a man help but believe in what is going on?

Q. I asked you what your belief was?

A. I can't say whether I believe in Hell or not. All I now is that people that do the wrong thing will suffer. I am not sure whether they suffer here or later. I am pretty sure a lot of them suffer here, but later, I do not know.

Q. Are you an evolutionist?

[fol. 34] A. I believe that men have evolved from something, but I do not know what—whether they came from

monkeys or not. I do not know. I do not know whether they started before maybe anybody else. I do not know.

Q. Have you ever read any books of any evolutionists?

A. I studied Darwin and Huxton. I had it in literature.

Q. When was that?

A. When I was a sophomore in College.

Q. You have not read anything more in evolution since?

A. Nothing special, no.

Q. Have you ever read anything about other religions than the Christian religions?

A. Yes, sir. I have.

Q. About what other religions?

A. Confucianism, which is not really a religion in one sense. Hinduism, Mohammedanism, and Hebrew.

Q. To what extent have you read on the other religions?

A. I think I learned the most by the fact I have known and talked to other students who believed in them. I might add the Japanese Shinto.

Q. Do you believe implicitly in the New Testament?

A. Insofar as I am able to understand it.

Q. Did you ever take the Four Gospels and read them as a newspaperman would and see what their variances and differences were?

A. I know there are a lot of variances and differences. I never read the four of them side by side probably but I have read all four of them. I know there are differences.

Q. Have you read the Four Gospels of any other version than St. James?

[fol. 35] A. I have read Goodspeed and Moffat and some of Weymouth.

Q. Is it your belief that any of the Gospels were written at the time that Christ lived?

A. From the best I know, the first one was not written until sixty years after He died. I think that was Mark.

Q. How about the others?

A. Luke was written later and Matthew was written still later, and John was not written I think until almost two hundred years afterwards.

Q. Is it the belief or doctrine in the New Testament that you rely on, or the decrees that you get from the Bible as a whole that is the foundation for your belief in non-resistance?

A. It is the picture of Him as a whole and the things that he said too, to show what he meant by the way of life. I can not separate the two really.

Q. Do you believe in the survival of the fittest?

A. Why yes. The fittest are not those who are physically fit, but those that are spiritually fit. They never die.

Q. Where did you get that idea?

A. Jesus taught that too.

Q. He does not distinguish between people, does he? He says all survive whether they are fit or unfit, doesn't he?

A. I thought he said somewhere he did not give his Kingdom of Heaven? To the other he did not give the Kingdom of Heaven.

Q. Did he give it to the Thieves on the Cross and so forth?

A. Yes; but he forgave him.

Q. Is there any direction except to believe in the survival?

A. I think you have to do more than that.

Q. He did not say so, did he?

[fol. 36] A. I thought he said, not he who said "Lord, Lord," but he who did the work of my Father.

Q. On the Cross he said, believe in me and you will be saved, did he not?

A. There was but one thief that was penitent, but I do not think to the other thief he made it.

Q. He said it the same to one as to the other?

A. One thief was penitent and he survived but the other did not.

Q. What happens to the one that does not survive spiritually in your belief?

A. I do not know, but I believe if he is good enough He will give ~~them~~ another chance. I do know how. But good men survive through the works they do, and bad men survive through the works they do here. Al Capone, he survived through the barrier that he spread in Chicago, and on the other hand another man survives by the lives he saved.

Q. What do you mean? The lives of other men who physically survive when the body is gone?

A. I do not believe anybody can physically survive. I believe when the body is gone, I am inclined to believe that is the end of it, of the body.

Q. What do you mean by the survival of the fittest?

A. The people who are surviving, the people that do good, the good lives after them, and the people who do not do

good, the evil lives after them. It is very much a case of which way you want to survive. I am sure of that much, but more than that I am not sure of. There may be a place where people go and float around with harps, and walk the [fol. 37] golden streets, I do not know, but I am pretty sure of the other.

Q. What in your reading or experience has ever indicated to you, out of past history, of which we have some six or eight thousand years, that non-resistance causes the survival of the human race?

A. The greatest example of non-resistance and non-violence in existence was Christ, and he is the man that survived longest.

Q. He did?

A. Isn't he still alive in thousands of Churches? That is what I mean by survival. He lives in the hearts of men.

Q. You are thinking about reputation. A lot of other people have survived.

A. No. Reputation does not necessarily mean you influence other people, but Christ in two thousand years has influenced millions in the sense he still works, he still lives.

Q. Is that what you mean by the survival of the fittest?

A. At least that much, yes.

Q. Satan survives too, doesn't he?

A. Yes.

Q. How do you explain his survival?

A. Man just has not enough guts to throw him overboard.

Q. You told Mr. Belatti awhile ago, while you had not preached any at Urbana or Champaign, you had done so elsewhere?

A. Yes, sir.

Q. Under what circumstances?

A. Well, at Champaign, the Wesley Foundation sent out some extension teams, out to churches in the state. I preached one at Kansas, Illinois, and one—I do not remember the other little town, right close by there. I preached [fol. 38] one in Peoria. I have preached at home, in my own home church, the day war was declared. Two Summers I spent with a group in New York. It was inter-religion and inter-faith and inter-racial, and we were sent out to churches every week to preach. I suppose in the two Summers I spoke fifteen or twenty sermons in different religions.

Q. What were the subjects of the sermons?



A. "World Brotherhood", "World Minded", "The Meaning of Nations", "The Purpose of Christ in the Lives of Young People". Those kind of things. Some of them on non-violence.

Q. Did you in each sermon get around to the subject of non-violence and pacifism?

A. Not in all of them.

Q. In most of them?

A. No. I do not think the most of them. I only remember of preaching one that was specifically on the subject.

Q. Mr. Summers, is there any question in your mind as to whether you were cut out for a preacher or music teacher rather than a lawyer?

A. Sometimes I very seriously consider going into the ministry. The fact is I considered it through most of two years of my schooling.

Q. Why did you change your mind?

A. Because I felt there were enough religious people in the churches—I mean in the ministry. I think there is a lot of work to be done in the law.

Q. Do you expect to use the law as a vehicle for the extension of your ideas?

A. That is not my purpose in law, just as a means of getting at these things, but when the situation has come up in [for 30] law that my principles guide me, I will follow them, whether it is in relation to non-violence or not. There is a lot of religion other than non-violence. I think there is work that needs to be done. A lot of prison reform that needs to be done. I think it is unchristian the kind of prisons we have. I think there are a lot of other things that perhaps the law has a place to do.

I think the law has a place to see to it that every man has a chance to eat and a chance to live equally. I think the law has a place where people can go and get justice done for themselves without paying too much, for the bulk of the people that are too poor. I have been particularly interested in the legal clinics that have been set up in different places. In fact I do not know too much about it. It is in the right direction.

I think in law if I did not do anything else, I might get a few more people to settle things without going to court, just to get together as friends, because my experience has been when people—I mean what little experience I have had—when people start suing each other in Court, they are

mad at each other and do not understand each other and have not made an honest attempt to get together, and I think that, from my point of view, I have something to offer in that, because I believe in settling it peacefully and settling it on terms of friendship and understanding rather than going through court. If there is no other way to obtain justice, then that is what the courts are for, but it seems to me that the lawyers main job or one of the main jobs is to try to get people to work things out peacefully and nice. That antagonism must necessarily grow out of a lawsuit, [fol. 40] you know it better than I do, but people feel madder after a lawsuit than they did before the lawsuit. Lawsuits do not bring love and brotherliness—they just create antagonism.

Q. Would it be your effort to eliminate all litigation possible if you were admitted to the Bar?

A. All that it is possible to without sacrificing the client's interest. A man can not do that. I mean he is entrusted with that. Of course, a man can not play two sides of the fence. He can not act as attorney for both parties. I know that. And yet if there is an opportunity to get both lawyers together and the parties together and sit down and talk it over and settle it peacefully, he should do that.

Q. Suppose you had a client that asked you to represent him, to become his advocate, and his ideas of what he was entitled to and yours did not correspond. He wanted to go ahead in a claim within his legal right. What would you do?

A. If it was a criminal case, of course, I would be bound to take it and get as much justice as I could, I mean, to protect all of his rights that I could. If it was a civil suit, and if the conflict were not too great, I think I would just tell him that my own personal feelings just made it impossible for me to do a fair job to represent his claims. I think perhaps that is about as good as I could do.

Q. Do you expect, if you are admitted, to practice law or to teach law?

A. I am not sure which I want to do all my life. I expect to make a choice between the two. I mean I did not throw the teaching out because I did not know for sure whether it was better to teach or to practice.

Mr. Wail: I do not think I want to ask him anything else. [fol. 41] Do you, Mr. Belatti?

Mr. Belatti: I did have two questions I had noted, but they have already been pretty well covered.

Examination.

By Mr. Belatti:

Q. Going back to the one suggestion you made rather frequently, that you would bet your life on the—that your course of conduct would eventually be successful. That offer to bet your life really means nothing unless the rest of the nation will go along with you in the same non-resistant attitude?

A. No. It means more than that. It means if the nation insisted too much upon my doing those things, I suppose I would just have to take the consequences from my own people.

Q. But it would not be your life? No thought of that with this nation?

A. If they started doing it in this country like they did in Germany, that is what I mean.

Q. That is what you mean. You did not mean you would be willing to stake your life on the success of non-resistance as against our foes?

A. Yes. I am willing to stake my life.

Q. All right. Is that what you mean by you bet your life?

A. Yes, sir.

Q. You can't bet your life unless another nation goes along with you on non-resistance?

A. No.

Q. They are defending you?

[fol. 42] A. I know that. I am willing to bet everything I have got.

Q. Then, another thing, about the distinction you make about the compulsion and without force in connection with the administration of justice, aren't you just as connected with the law, in their law enforcement agency, by being a member of the Bar as you would be connected with the military forces if you were in the hospital service, even under military direction?

A. Just as much? I mean the relationship is just the same, but the difference it seems to me lies in this: That the object of the police force is to restrain and reclaim people, and that is not the object of the military force.

Q: Now, are you right in that? That is what I am getting at. You do admit the analogy between your position and the two different things however?

A: Yes.

Q: Then, couldn't the effort of the military authorities be used to restrain our enemies, even if they have to kill them?

A: There is certainly no effort to reclaim them.

Q: Well, that is —

A: I mean to try to make them decent people again, and it seems to me another distinction, when you are dealing with criminals, you are dealing with somebody as an individual. At least to a certain extent they have been responsible for where they are, but there are a lot of boys that are fighting for the Germans, the Italians and the Japanese that do not want to fight any more than we do. They do not want to kill us any more than we want to kill them. [fol. 43] They do it because they think they have to.

Q: But the police power may be required to kill people in order to restrain them?

A: I do not know whether it is done or not.

Q: It is done all of the time?

A: It is done but insofar as it does, it fails to live up to its highest ideals.

Q: And yet you would not object to being connected with the administration of justice where that is frequently done?

A: I am not connected quite in the same way they are.

Mr. Belatti: All right. That is all I have.

#### Examination.

By Mr. Graman:

Q: Mr. Summers, do you believe that it is necessary to have organized Government?

A: Yes, sir.

Q: But you do not think that Government should support itself by force?

A: Yes, sir. I mean I do not think they should by force. I agree with your statement.

Q: And any organized government in the face of a foe should offer no resistance?

A: They should offer resistance but not military, violent resistance.

Q. Well, would it be all right for the individuals themselves to offer resistance, leaving out any thought of the military at all?

A. Not any violent resistance.

Q. If an invasion occurred at any time within the con-[fol. 44] fines of a territory controlled by an organized Government, the people would be wrong to resist that invasion, either in an organized way or individually?

A. They would do wrong to resist it with force. They would be bound to resist it, but it would be non-violent resistance.

Q. By prayer and by good will?

A. By prayer and by good will and by absorbing the punishment. There is no choice there.

Q. Yes, and that would apply to the people on the borders of our country; for instance, down in Texas—if a marauder came across the boundaries of Texas, evil minded people, bound on stealing the horses and cattle of the folks that live along your border, it would be wrong, in your opinion, for those farmers to resist by force any effort on the part of the marauders to steal their property?

A. Yes, sir, but we would all be under an obligation to put ourselves in the service, to help in the non-violent resistance.

Mr. Nail: You do not believe it would work in Texas?

The Witness: I believe it would.

Mr. Garman:

Q. Who is the minister over to the Methodist Church at Urbana?

A. Paul Burt.

Q. Have you talked to him about these questions?

A. Yes, sir.

Q. Is he sympathetic with your point of view?

A. Yes, sir.

Q. And is your conviction his conviction?

A. We agree but we arrive at it independent of each [fol. 45] other pretty much.

Q. And he is a pacifist?

A. Yes, sir.

Q. And he believes in non-resistance?

A. Yes, sir.



Q. Now, have you counselled with other people on this subject?

A. Yes, sir.

Q. With whom have you counselled?

A. Well, a number of students I have been around with. Individually?

Q. I am speaking of mature people? Older people?

A. You mean I have asked their opinion, or I have expressed my opinion to?

Q. No. Have you talked with them or counselled with them before making up your own mind or to get help in making up your own mind?

A. Yes. Do you want some names?

Q. Yes.

A. Roy Hendricks is one.

Q. Now, who is he?

A. He was student assistant there at Wesley.

Q. How old was he?

A. He was about twenty-six.

Q. No. I am talking about not children.

A. Oh.

Q. But people of mature years?

A. Harold Fey. He is Editor of the Christian Century.

Q. Now, is he a pacifist? I mean, does he believe in non-resistance?

A. Yes.

Q. That is his present belief?

[fol. 46] A. Unless he has changed his mind.

Q. When did you talk to him about it?

A. A year ago in June.

Q. That was before War came to this country?

A. Yes.

Q. Now, you have not talked with him since?

A. No, sir.

Q. Who else have you talked with?

A. Kirby Page.

Q. When did you talk with him?

A. Let's see! Once in 1938 and once at least in 1939—June, 1939, and once in the Spring of 1941.

Q. Not since War was declared in this country?

A. No, sir.

Q. Have you talked with any mature people about this question since War was declared in this country?

A. Doctor Burt, of course. He is about fifty.

Q. Yes. I know Doctor Burt.

A. Now, let me see! That was since last December 7. I do not just definitely remember anybody.

Q. Now, those are the only people, Mr. Summers, that you have talked with about the question of non-resistance?

A. There are dozens of people I have heard speeches from, but I have never—I mean express the position. I did not ask them a question; that is, I did not talk to them for their advice. There is another person—H. A. Musty, who is, I guess, still at the head of the Fellowship of Reconciliation. I talked to him back in the Fall of 1939.

Q. Who was he? What is the Council of Fellowship of Reconciliation?

[fol. 47] A. It is the Christian Pacifist Organization.

Q. And where is he located?

A. I am not sure. Their office is in New York. He travels around the country mostly. And then, of course, DeWitt Baldwin. He was the one who was in charge of this group I was with in New York. He is Student Secretary of the Methodist Board of Missions.

Q. What group were you with in New York?

A. It was called the Lyle Fellowship. It was inter-religious, inter-racial and inter-faith, but mainly supported by the Methodist Board of Missions.

Q. And it believed in non-resistance?

A. Not the whole group. The group was split up half and half.

Q. Now, have you talked with any people—have you counselled with any people who had not shared your views for the purpose of obtaining their advice?

A. Well, I have counselled—I talked to the Colonel—Colonel Brown of the University R. O. T. C. He was the head of the R. O. T. C. That was the Fall of 1938. I talked to him two or three times.

Q. What was the occasion of your talking with him. Were you in the R. O. T. C.?

A. Not that year. I was out in that year.

Q. You did have two years in the R. O. T. C.?

A. Yes, sir. I had two years of basic military.

Q. You did not feel that way at that time?

A. No, sir. I changed my mind two years after I was out of the military.

[fol. 48] Q. If you had felt that way then you would not have participated in the R. O. T. C.?

A. That is right.

Q. What was the occasion of your talking to Colonel Brown? Did you seek him at that time to talk to him on that subject?

A. No. Not exactly that. I wanted to ask him what it was—I wanted to get his viewpoint of what the values of the R. O. T. C. are, what the purposes are, what they expect to do with it, how much they were doing with it, figures on the cost and those things, and he gave me material on all of that.

Q. You did not talk with him about any personal problem you had or any difficulty?

A. Well, he knew my personal position. That was in the Fall of 1938. The first time I talked to him was along in December.

Q. I understood you changed your view?

A. That was in the Summer of 1938 but I never came to the conclusion until about September, 1938.

Q. But you were not seeking help from him? You had an argument with him? Isn't that right?

A. Well, maybe, yes.

Q. Now, Mr. Summers, you really have not sought out older people?

A. My Dad talked to me a lot about it, and he certainly disagrees with me all right.

Q. Of course, our Fathers have very little influence on us and sometimes we like to disagree with our Fathers.

A. And another man I talked a lot with was Henry Wilson. He is the General Secretary of the Y. M. C. A. We were working on inter-religious things, and, of course, some of those things came up and we talked quite a lot about it. [fol. 49] And John Bennett.

Q. And your talking with those people was largely in justification of your position, was it not?

A. Well, we were both listening together, I think, fairly-mindedly. Of course, the truth was I made up my own mind when nobody was around and I talked to the people, but when I made up my mind, I did it independently of either side.

Q. But you, of course, feel you have talked with enough people and you have adequate information on which to base your conclusion?

A. Yes.

Q. And that nothing would change it?

A: That is right.

Q. And it is your opinion that an oath to support the Constitution of the United States would not oblige you to use any force at any time?

A. Military violent force.

Q. Or police force or individual physical force?

A. Yes.

Q. I can not understand your distinction between military force and other force?

A. In the Military you kill innocent people and in the other case you get the criminal.

Q. Suppose all of the people in an opposing group—aren't these people that came across the border to steal the stock of the Texas farmer criminals? Aren't they?

A. Those are individuals, and the thing to use is organized police system for capturing them and taking care of them, but it is not War.

Q. It is force, isn't it? How do you distinguish, Mr. [fol. 50] Summers, between the group of people who came across the border to steal the cattle of the Texas farmer and the people who raided Pearl Harbor?

A. I know some Japanese boys that are just one hundred per cent. people.

Q. Yes. We all know it. How do you distinguish between the people who raided the Mexican border and the people who raided Pearl Harbor?

A. The fact that some are criminals and others are not.

Q. What makes them criminals?

A. Because they do things that are pretty much of their own volition, and the Japanese did not do it. The men that did the work did it because they thought they had to, for the same reason that a lot of boys are in the Army now, not because they believe in it but because they have to.

Q. They are in the same position you are? They did have the same right you have, didn't they?

A. Yes, sir.

Q. They did not have to go into the Army any more than you have to go into the Army?

A. No. But they feel it is expected of them and they did not see any other way.

Q. Now, his choice to go into the Army you think makes him a criminal?

A. No, no, a thousand times no. These people that are fighting are not criminals.

Q. He is going to kill people?

A. He is helpless in it.

Q. No, he is not. You just stated he has some freedom to choose.

[fol. 51] A. He has to, regardless. You are twisting my words. I do not think boys in the Army are criminals. They are a decent bunch of fellows, doing what they think is right. That is what I am trying to do. They are decent guys and they do not want to kill people either.

Q. Now, let's get down to brass tacks: They kill people?

A. But we are all the ones that send them to kill them.

Q. We all send them, you and all of us?

A. Yes.

Q. So as a part of organized government we send them out to kill?

A. Yes, and we are all guilty.

Q. And we are going to reap the benefit of their victory, aren't we?

A. If there are benefits.

Q. And we will label them as transgressors against the Will of God, but we will accept the benefits of their transgressions, won't we?

A. I am trying—What Jesus said about the lawyers in his day. He says you strain but to swell humiliation. But these boys can't—you see they are decent—they are doing the best thing they know and they are doing it because they see it for them. It is the only thing they can do. I do not think God is going to be very hard on them.

Q. But we are the ones calling them up?

A. I am not calling them. I am not calling them criminals.

Q. They are transgressing the Will of God, aren't they?

A. Yes, but they just do not know it.

Q. And for that they will be benefitted?

A. They are like the Thief on the Cross.

[fol. 52] Q. One thief asked them?

A. Don't think they have not asked. I know some of them.

Q. Well, you do not know all of them, Mr. Summers?

A. No, but I know a lot of them. I get letters from them.

Mr. Vail: I would like to ask a couple of questions more, if I may. Are you about through, Horace?



Mr. Garman: Yes.

Mr. Vail: Excuse me.

Examination.

By Mr. Vail:

Q. Do the University of Toledo authorities, for whom you are teaching, know you are a conscientious objector?

A. Yes, sir. They knew it before they hired me.

Q. In order to obtain a teaching position with that University was it necessary that you be admitted to the practice of the law?

A. No, sir.

Q. You could continue to teach without being admitted to the practice so far as the school where you are was concerned?

A. Yes, sir. So far as I know. They have not said anything.

Q. Suppose, Mr. Summers, that the law, your being exempted as a conscientious objector, were repealed by Congress, so that there were not exceptions made, what would you do?

A. The first situation is the situation that has been presented to me. I do not know for sure what my reactions would be, because I had a certain kind of reaction to the First Draft that I did not understand, that I did not expect, so I do not know what I would do in that case, but [fol. 53] so far as I see now, I simply could only say, I am willing to do constructive work, but I would not be a part of the Army. I cannot help what the consequences were any more than if the Congress passed a law that every man was compelled to kill his neighbor's dog. I would not obey that law. And if the Government insisted, I would take the consequences. I would rather trust in the sermon on the Mount—I will stop with that.

Mr. Vail: I think that is all.

Examination.

By Mr. Garman:

Q. Mr. Summers, not only that you would stick to the Sermon on the Mount, but your own interpretation of it?

A. I would much rather do what I think is right than do what I am pretty certain is wrong.

Q. Yes. You interpret the scriptures for yourself?

A. With the help of others, yes. I mean, I am not averse to stating—

Q. Let me ask you this question: Would you consent to being a prosecuting attorney?

A. Yes.

Q. And you would ask for the death penalty in a murder case?

A. No, sir.

Q. In the event that the statute authorized it?

A. No, sir. The statute does does not require it.

Q. Would you garnishee a man's wages and take from him and his family the sustenance upon which they depend for life?

A. If that is the only way of their getting bread to eat, [fol. 54] I would not take it. I would rather pay it myself.

Q. Would you evict a man from his home for failure to pay rent?

A. If he had not paid rent, there is nothing much else you can do.

Q. Well, would you evict him?

A. Yes. But if there were no houses available—if there was no place for them to go, I would not set him out in the street to freeze and starve. They would just have to go to another lawyer to do those things.

Q. You would not consider that that was any obligation that you had assumed toward a client?

A. I would have to assume the obligation by just simply telling the client my conscience would not let me do it; they would have to find some other lawyer who did not feel the same way. That would be far better than taking the case when I thought it was wrong. I am afraid if I started to do something that was wrong, I would not be as good a chap as I should. It would not be fair to my client.

Q. Aren't these notions you express here rather difficult for a man to hold in practicing law?

A. It is just a question to hold and live. In practicing law it is not harder than fighting for anything else as I see it.

Q. Would you think there are fewer lawyers and therefore you could serve better as a minister?

A. I might say, there are a smaller proportion of the lawyers who believe the way I do but want to practice law because they want to try to get the right results.

Q. How many lawyers outside of me and Mr. Belatti [fol. 55] here do you know?

A. Well, not so very many. A dozen or fifteen. Of course, I do not know them today.

Q. Have you attended many trials?

A. No.

Q. Have you talked with many lawyers about the practice of the law and their methods of handling lawsuits and the litigation of their clients?

A. I have talked some. Not too much.

Q. Is it your impression from those you talked to that the legal profession as a whole is a monetized outfit?

A. No, sir.

Q. And that they thrive on litigation and trouble?

A. No, sir. I think the greatest proportion of them are doing the very best they can. I have known some lawyers that are just about as fine a people as I have ever known.

Q. Do you think that most of the professions do not share the idea and ideals you have expressed here for the Bar?

A. I would not want to say they did not share them, but I would want to say they were not particularly motivated in practicing law by trying to achieve those ends. Most of them—most lawyers never do anything wrong. I mean they do the right thing as they see it, but there is a difference between doing the right thing as you see it when it comes to you and attempting to building something new.

Q. Mr. Summers, do you dance?

A. No, sir. I do folk dances—not social dances.

Q. Not social dancing?

A. No, sir.

Q. Did you take part in many social activities about the [fol. 56] University?

A. I took a part in a lot of them at the Wesley Foundation. There are a lot of social activities there.

Q. Do they dance?

A. They play folk dances.

Q. Did they have social dancing at the Wesley Foundation?

A. No, sir. They do not permit it.

Q. Do you believe it is immoral?

A. No, sir. But there are some that do think it is immoral.

Q. There are some that do supposedly righteous things immorally?

A. Yes.

Q. Did you have many dates with the girls while you were at the University?

A. I did not have any the first three years for the reason I did not have any money and had less time. After that, I had some in the last couple of years, quite a number.

Q. Do you bowl?

A. I have, but I did not do so good.

Q. Did you ever play baseball?

A. Yes. I used to. I do not get to any more. I played soft ball mostly.

Q. Did you play football any?

A. I played it until I got big enough and my Dad was afraid I was going to get hurt. I did not play it any more.

Q. What was your recreation while in school?

A. Boxing, handball, tennis, swimming, running, tum-[fol. 57] bling, those kind of things, and folk games.

Q. You did not participate in any group activities?

A. No, because I just could not arrange the time and get into it.

Q. Don't you like group activities?

A. Yes. I would rather play football than anything else. I am not sure but—

Q. Are you a pretty good boxer?

A. I can hold my own with anybody who is not over thirty pounds heavier.

Q. But you would not use your fistie ability to preserve order or decorum or to prevent any harm or evil that might befall an innocent person?

A. No.

Q. Of course, I guess since these convictions have congealed in your mind no one has ever struck you?

A. Let me see! I am pretty sure there were one or two times, if I can recall them back. I know since that time many people have threatened to, but I have not offered to fight until they walked off.

Q. But if they had fought you or struck you?

A. I would have taken it or walked out as quickly as I could.

Q. Would you have turned your cheek?

A. Yes.

Q. Would you have run?

A. I would have stayed out of his way until he cooled off, if I thought it was more than just a flare of temper,

I would not run, but if it was a flare of temper, I would go off. [fol. 58] He is generally sorry enough. There is no use making him more sorry.

Q. If he wanted to beat you up, you would let him beat you up to his heart's content?

A. Yes.

Q. Mr. Summers, I do not think you would.

A. Maybe I would not, but if I did otherwise I would feel remorseful afterwards.

Q. Well, isn't it perfectly possible for us to use force righteously and feel sorry we have to do those things and ask for forgiveness for every blow that we dealt?

A. Well, there are a lot of good men that think so, and there are a lot of people in even churches, there are a lot of Methodists that feel that way about it, but I do not. I feel that God is going to look a little skeptical when we stab a man with our bayonet and then say, "Lord, forgive us".

Q. Even though that man was about to stab you?

A. I am afraid so. Jesus said, put up your sword. That is what he said. We never try to defend. Put up your sword, else they will take you.

Q. He was trying to impress upon him a great moral teaching, wasn't he?

A. Yes. That I will do the best I can.

Q. And he was in a position to do that?

A. Yes. And maybe I am.

Examination.

By Mr. Vail:

Q. Did you ever take a drink?

A. Well, along about eleven years ago my Brother made [fol. 59] some white grape wine that my Dad did not know about at that time. We had a couple of glasses before the wine spoiled. Outside of that, I do not know anything about it.

Q. You are a prohibitionist by practice?

A. Yes, sir.

Q. Do you smoke?

A. No, sir.

Q. You do not engage in social dancing yourself?

A. No, sir. Not because I do not believe in it, but because I do not function that way. I could not coordinate and gave it up.



Q. Do you ever play poker?

A. No.

Q. Ever try?

A. I played for months while a freshman in college, the school year, but since then I do not believe I have ever played.

Q. Do you play bridge?

A. No. Never took the trouble to learn.

Q. Did you ever play any card game?

A. Used to play Rhum. Our family used to play Euchre, Rook, and so forth.

Q. Did you play checkers?

A. Checkers and chest.

Q. How are you on Chest?

A. It depends on how good the other fellow is. I am not so hot.

Mr. Vail: Any questions, Mr. Belatti?

Mr. Belatti: No, I have not.

Mr. Vail: I would suggest that you step to the outer [fol. 60] office, Mr. Summers.

Mr. Summers: Would I be permitted to say a word or two in my own defense?

Mr. Vail: Why I have not any objection to him saying anything. Have you?

Mr. Belatti: If you have not covered the situation in answering the questions.

Mr. Vail: Make any statement you wish?

#### STATEMENT

Mr. Summers: In the first place, I want to say this: I realize what my position is from a religious standpoint. I realize that a lot of people differ on things, have a difference of opinion. I would not any more want to ask them to do my bidding when I believed otherwise than for them to ask me to do otherwise. That is the first thing.

My second position is that my teachings give me no other alternative. For the first three centuries every Christian was a pacifist, and not until they tried to get the blessing of their own empire—

Mr. Garman: Pardon me if I ask a question: You may be very scholarly, but we want to know if you know anything about it?

Mr. Summers: The writers of that day say that is one of the sensitive points of Christianity. You could not bear the

Cross of Jesus and bear the sword of State. You either followed the Cross or the State, and that was their own empire. So they refused military service for three long years. Augustine was the first one that let them down.

I have made my choice regardless of the consequences. I do not know what the consequences will be.

I would like to say this in the second place, that I was [fol. 61] frankly amazed to run into the difficulties, and the more I think, the more I am amazed in the Illinois Constitution that says a man is not required to do military duty in time of peace.

In the second place, the position in the Sullivan case is not distinguishable from my position because of religious views. That is with me absolutely. They say you were required to take an oath. I am willing to take an oath for what I think it means. There were people in one camp in New York—

Mr. Vail: I would suggest that you make a statement of your position and not argue as to what other people think.

Mr. Summers: All right. I mean I think it has a bearing. There are five lawyers in that Camp. There is a member of the New Hampshire Bar also who is a conscientious objector that is director of that Camp. It seems to me strange. I do not know. I was hired to teach law. They knew I was a conscientious objector. The Dean and President of the College, and the President is all out for War, and was a member of the Draft Board; thought it was all irrelevant. I turned down a scholarship and that scholarship was to prepare to teach law or for Government Service. They knew I was a conscientious objector. A fifteen hundred dollar scholarship. Dean Harno, I talked to him about it, when it first came up, and his remark was he did not see how that would make any difficulty.

Mr. Garman: What was the first difficulty?

Mr. Summers: I was not passed by the Committee. Mr. Belatti said he would have to consult with other members of the committee. I told Dean Harno that, and asked him [fol. 62] what I should do. He said, he did not see that that should cause any difficulty. He wrote me after I went to Toledo and said he did not think there should be any trouble. There are those things and the one case I have been able to find on a conscientious objector's admission to the bar, and he was a religious objector, was not a conscientious objector at all, and the testimony in the case

tends to show enough about his refusal, his love of patriotism, and the fact he did not think War was just or something—it was not clear, but he was admitted to the Supreme Court. Of course, the two cases in which they were to uphold and defend the Constitution have been repealed. They have stated that a conscientious objector is not entitled to become a citizen, and the dissents on those cases, Holmes on one of them, and he was the man probably that put the skids under the report to the Walt doctrine of Court as a defense in this Country. He fought in the Civil War, and yet he wrote the dissent, and yet he said he could see nothing dangerous—anything dangerous about such a position, and he said he never supposed that we would regret the fact that we had let the Quakers in the country and wished them good.

There they had Hughes in that second case who said he thought it strange a man should be refused admission to this country on account of religious beliefs because he believed in the sermon on the Mount a little more than Jesus did. Those are the cases.

Another case in the Civil War, all of the parties being Rebels in the Civil War. Statutes were passed saying that they should not be allowed to practice law. They had participated in the Rebellion. A blanket pardon was given, [fol. 63] which it seems to me the equivalent to what the law is on a conscientious objector, and they held that the Court could not refuse to give a man admission to the Bar because he had participated in the Rebellion. I submit that the participation in the Rebellion is more than the refusal to fight; at least I have not raised my hand against the country.

And those are the things that I think would have a bearing in this case. I suppose that is enough. But with my life I will stick to my position because it is right. I really have not any choice.

Mr. Vail: Suppose you have a seat out there. We may want to ask you something else.

Whereupon the hearing was adjourned, with the understanding that the testimony would be submitted to the fourth member of the Committee, who was absent, and then a report made.

[fol. 64]

## UNITED STATES OF AMERICA

STATE OF ILLINOIS,

Supreme Court, ss:

I, Earle Benjamin Searey, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a photo-static copy of a letter of Justice June C. Smith addressed to Mr. Francis Heisler, Attorney at Law, a stipulation between Mr. Heisler and the Attorney General that a supplemental record be prepared by the Clerk of the Supreme Court, and the original transcript of proceedings held before the Committee on Character and Fitness, submitted to this office on March 8, 1945, by the office of the Attorney General, in a certain cause entitled in this Court In re: Clyde Wilson Summers, N. R. #462.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this 12th day of March 1945.

Earle Benjamin Searey, Clerk, Supreme Court of the State of Illinois.

[fol. 65]

IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

## STIPULATION—Filed March 16, 1945

It is hereby stipulated by and between the petitioner in the above entitled cause, by his counsel, and the Chief Justice and Associate Justices of the Supreme Court of Illinois, by George F. Barrett, Attorney General of the State of Illinois, their counsel, that a supplemental transcript of record may be printed, without order of this court, or, in the alternative, that an order of this court may be entered instantler or at any time that shall serve the convenience of the court authorizing the printing of a supplemental transcript of record in the above entitled cause, which supplemental record has been prepared by the stipulation of the parties in the Supreme Court of Illinois and which supplemental record is transmitted with this stipulation.

[fol. C'] Such supplemental record contains the following papers and no others:

1. A photostat of a letter from June C. Smith to Francis Heisler dated March 22, 1944, announcing that the court declines to further consider its former action in this matter.

2. A stipulation relative to the preparation of such supplemental record.

3. The original transcript of the proceedings before the Committee of Character and Fitness in the petitioner's matter.

4. The certificate of the Clerk of the Supreme Court of Illinois.

Julian Cornell & Francis Heisler, by F. H., Attorney for Petitioner. George F. Barrett, Attorney General of the State of Illinois, Attorney for Respondents.



FILE COPY

JUN 29 1944

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

No. 205

*In re* CLYDE WILSON SUMMERS,

*Petitioner.*

PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS AND FOR WRIT OF  
MANDAMUS TO COMPEL SAID COURT TO CERTIFY A  
TRANSCRIPT OF ITS RECORD HEREIN

JULIEN CORNELL,

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CLIFFORD FORSTER,

Of New York, N. Y.,

*Of Counsel.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

No. \_\_\_\_\_

*In re* CLYDE WILSON SUMMERS,

\_\_\_\_\_  
*Petitioner.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ILLINOIS AND FOR WRIT OF  
MANDAMUS TO COMPEL SAID COURT TO CERTIFY A  
TRANSCRIPT OF ITS RECORD HEREIN**

*To the Honorable Chief Justice of the United States and the  
Associate Justices of the Supreme Court of the  
United States:*

Petitioner, Clyde Wilson Summers respectfully prays for a writ of certiorari to the Supreme Court of the State of Illinois to review a determination of that court made on March 22, 1944, denying a petition filed February 18, 1944, for reconsideration of the Court's denial on September 20, 1943 of petitioner's petition filed August 2, 1943 for admission to the practice of law in the State of Illinois, and further prays for a writ of mandamus to said Court requiring it to certify and send to this Court a transcript of its record herein.

### Statement of Matters Involved

Petitioner having completed the course of study of law at the University of Illinois took and passed the prescribed examination for candidates for admission to the bar of Illinois in June 1942, whereupon he filed on August 5, 1942 his application for admission to the bar. Subsequently petitioner appeared before the Committee on Character and Fitness of the Third Appellate District of Illinois, which refused to certify him to the Board of Law Examiners as qualified for admission to the bar, although in all other respects he was so qualified, for the sole reason that said committee regarded him as unfit to practice law because he is a conscientious objector to war. He told the committee that he could not participate in war because of his conscientious scruples, and that he was classified in Class IV-E as a conscientious objector by his draft board.

On August 2, 1943, petitioner filed with the Supreme Court of Illinois a petition for admission to the practice of law on the ground that he was entitled to admission to the practice of law, having fulfilled the requirements therefor, and was unlawfully and improperly denied such admission solely because he is a conscientious objector.

The question so presented was considered by the Court informally, was not treated as a matter of record and petitioner did not have an opportunity to be heard. Petitioner was informed by letter from the Chief Justice of said Court that the petition was denied September 20, 1943. On February 18, 1944, petitioner filed a petition for reconsideration of the Court's previous action, which was again considered informally and without petitioner having an opportunity to be heard, and he was informed by letter from

the Chief Justice dated March 22, 1944, that the petition for reconsideration was denied.

The time within which to file a petition for certiorari was, on June 22, 1944, extended for a period of seven days, namely, to June 29, 1944, by order of Justice FRANKFURTER.

### **Jurisdiction**

The jurisdiction of this Court is invoked under Section 237b of the Judicial Code (28 U. S. C. Sec. 344b).

### **Question Presented**

Was the petitioner deprived of his liberty and property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution in having been denied admission to the practice of law, although otherwise qualified, because of his conscientious scruples against participation in war?

### **Constitutional Provisions Involved**

United States Constitution—Amendment XIV, Sec. 1.

“ . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

## Reasons for Allowance of Writ

This Court has never decided the question whether denial of admission to the practice of law may be a deprivation of liberty and property without due process of law and a denial of the equal protection of the laws under the Fourteenth Amendment. We have found no case involving admission to the practice of law decided by this Court since 1873, when this Court held in *Bradwell v. Illinois*, 16 Wall. 130, that the denial to a woman of admission to the bar because of her sex would not be disturbed as denying her the privileges and immunities belonging to citizens of the United States. A very different question from the one here presented. The application of the Fourteenth Amendment to cover deprivation of religious and other liberty and property without due process of law, and denial of the equal protection of the laws, had not been developed when this case was decided.\*

Not only has this court never decided whether the due process and equal protection clauses of the Fourteenth Amendment extend to the denial of admission to the bar, but the denial of this privilege to petitioner was made under such circumstances that the case assumes particular importance at this time. The petitioner was refused admission to the bar of Illinois on the sole ground that he is a conscientious objector to war, despite the fact that the right of conscientious objectors to freedom of religion and protection in their belief is recognized by the Selective Training and Service Act of 1940,\*\* and despite the fact that

\* The Slaughterhouse Cases 16 Wall. 36 were decided the day before *Bradwell v. Illinois*, *supra*.

\*\* Sec. 5g.



conscientious objectors have long been regarded as valuable and worthy citizens entitled to enjoy all the rights and privileges of citizens which the Fourteenth Amendment was designed to protect. (See the dissenting opinion of Chief Justice HUGHES in *U. S. v. Macintosh*, 283 U. S. 605, 639.)

The withholding from an American citizen of liberty secured by the Fourteenth Amendment, liberty which the nation is now fighting to secure, based on a narrow view which springs from intolerance of his religious beliefs, is so abhorrent to the constitution and indeed to our sense of justice, that this Court should be quick to intervene and should hear this case.

### **Necessity for Issuance of a Writ of Mandamus**

Petitioner's attorney, immediately upon being instructed to file a petition for a writ of certiorari herein, telephoned to the office of the Clerk of the Supreme Court of Illinois and was told that the Clerk would certify to this Court a transcript of the record consisting of the petition, petition for rehearing, and two letters from the Chief Justice of the Illinois Supreme Court to the petitioner informing him that said petitions had been respectively denied. Type-written copies of said documents were immediately sent to the Clerk and his fees for certification paid. On June 27, 1944 in response to his inquiry, petitioner's attorney received from the Clerk of the Supreme Court of Illinois, Edward F. Cullinane, the following telegram:

## "WESTERN UNION"

1944 Jun 28 PM 12 46

AB82

NG101 DL Collect=BK Springfield Ill.28 1042A

Julien Cornell=

Attorney at Law 15 William St NYK=

D 10

In re Summers. I cannot certify record as petition and motion to review et cetera were not filed and documents are not in my custody. Such petitions are treated informally by this Court and all such files are retained in courts file to which I do not have access no formal order was entered on Summers petition through this office letter follows=

Edward F Cullinane."

Petitioner therefore submits with this petition a transcript of the record which is not certified as required by Rule 38 of the Rules of this Court.

Petitioner is informed and believes that the record herein is in the possession of one or more of the justices of the Supreme Court of Illinois and that the orders of that court denying the petitions herein are entered in a docket of that court, although said record and docket may not be under the control of the Clerk.

Petitioner respectfully urges that the certification of papers is a function of the court, that the Clerk is merely the agent of the court in exercising that function, and can not lawfully refuse to certify a record required by this court merely because the Justices and not the Clerk have custody thereof.

Because of the refusal of the Clerk of the Supreme Court of Illinois to certify the record in this cause, petitioner prays for a writ of mandamus in aid of the appel-

late jurisdiction of this Court to the Supreme Court of Illinois requiring it to certify the record.

WHEREFORE petition prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the Supreme Court of Illinois commanding that Court to certify and send to this Court this cause and a complete transcript of the record and all proceedings had herein to the end that this cause may be reviewed by this Court, that the determination of the Supreme Court of Illinois be reversed, and that a writ of mandamus may issue out of and under the seal of this Court directed to the Supreme Court of Illinois commanding that Court to certify and send to this Court a complete transcript of the record herein in aid of the determination of this Court upon petitioner's application for a writ of certiorari, and that petitioner have such other and further relief in the premises as this Court may deem proper.

Dated, June 27, 1944.

CLYDE WILSON SUMMERS,  
*Petitioner.*

JULIEN CORNELL,  
Attorney for Petitioner,  
15 William Street  
New York, N. Y.

FILE COPY

Office of the Clerk of the U. S.  
JUN 27 1944  
CHARLES STANLEY

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

No. 205

*In re* CLYDE WILSON SUMMERS,  
*Petitioner.*

**BRIEF IN SUPPORT OF PETITION  
FOR CERTIORARI**

JULIEN CORNELL,  
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CLIFFORD FORSTER,  
Of New York, N. Y.,  
*Of Counsel.*

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

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No.

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*In re* CLYDE WILSON SUMMERS,

*Petitioner.*

---

**BRIEF IN SUPPORT OF PETITION  
FOR CERTIORARI**

---

**Opinions Below**

No opinion was expressed by the Supreme Court of Illinois, nor by the Committee on Character and Fitness of the Third Appellate District of Illinois.

**Jurisdiction**

The determination of the ~~Supreme Court~~ of Illinois now sought to be reviewed was made on March 22, 1944. The time within which to file a petition for a writ of certiorari was extended for seven days by order of Mr. Justice FRANKFURTER made on June 22, 1944. The jurisdiction of this Court is invoked under Section 237b of the Judicial Code (28 U. S. C. Sec. 344b). This Court exercised jurisdiction in a similar case involving admission to the Illinois bar. *Bradwell v. Illinois*, 16 Wall. 130.

## Statement of the Case

A summary statement of the case is set forth in the petition.

## ARGUMENT

### POINT I

**The right to practice law is a right of liberty and property protected by the Fourteenth Amendment.**

Although the question has never been decided by this Court whether the right to practice law is a right of liberty and property which may not be denied without due process of law nor denied the equal protection of the laws, several such cases were decided by this Court before the adoption of the Fourteenth Amendment, and shortly after its adoption but under another clause, namely the privileges and immunities clause. Such cases include: *In re Secombe*, 19 How. 9; where mandamus was denied to review the disbarment of an attorney because it was held not to be the proper remedy; *In re Garland*, 4 Wall. 333, which held unconstitutional an Act of Congress restricting membership in the Federal bar to those who took an oath that they had never given aid or comfort to the Confederacy on the ground that such a law was *ex post facto* and a bill of attainder; and *Bradwell v. Illinois*, 16 Wall. 130, where a woman was denied admission to the bar of Illinois by the State Supreme Court on the ground of her sex, and this Court held that the privilege of the practice of law was not a privilege of United States citizens protected by the privileges and immunities clause of the Fourteenth Amendment.

These are the precedents, and all of them were decided on different grounds than those urged here. This question is therefore a novel one for this Court and we must turn for guidance to analogous cases, such as those involving licenses to engage in occupations other than the practice of law.

The case of *Dent v. West Virginia*, 129 U. S. 114, like this case, was addressed to the due process clause of the Fourteenth Amendment, but involved the validity of a statute setting certain conditions for admission to the practice of medicine. The Court's opinion, written by Mr. Justice FIELD, enunciated this principle, which would be broad enough to cover the practice of law, as well as the practice of medicine:

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions" (at page 121).

A similar statement, somewhat broader in its application, which would also include the liberties here involved, is found in *Allgeyer v. Louisiana*, 165 U. S. 578, 589:

"The liberty mentioned in that amendment is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation."

Many times has this Court been called upon to protect the right to engage in a lawful occupation or profession in

the face of infringement claimed to violate the due process clause of the Fourteenth Amendment. From these cases there clearly emerges the principle that the Fourteenth Amendment protects the right to carry on any ordinary occupation or profession as a means of making a livelihood and that the arbitrary denial of this right is a deprivation of liberty and of property without due process of law within the meaning of the Fourteenth Amendment. See: *Butchers Union Co. v. Crescent City Co.*, 111 U. S. 746, 762; *Truax v. Raich*, 239 U. S. 33, 41; *New State Ice Co. v. Liebmann*, 285 U. S. 262, 278; *Smith v. Texas*, 233 U. S. 630, 636.

This doctrine has been applied to many occupations and professions, which cannot be distinguished in principle from the practice of law. See: *Yick Wo v. Hopkins*, 118 U. S. 356 (operation of a laundry); *Mayflower Farms v. Ten Eyck*, 297 U. S. 266 (price-fixing of milk); *Smith v. Texas*, 233 U. S. 630, *supra* (railroad brakeman); *Liggett v. Baldrige*, 278 U. S. 105 (pharmacy); *Dent v. West Virginia*, 129 U. S. 114, *supra* (medicine); *Hurwitz v. North*, 271 U. S. 40 (medicine); *Semmler v. Oregon State Board*, 294 U. S. 608 (dentistry); *Stanley v. Public Utilities Com.*, 295 U. S. 76 (motor carriers).



## POINT II

**The denial to petitioner, although otherwise qualified, of admission to the practice of law because of his conscientious scruples against participation in war was a deprivation of liberty and property without due process of law in violation of the Fourteenth Amendment.**

It is true that a State may require a license or the fulfillment of certain qualifications or the passing of prescribed tests as conditions precedent to the carrying on of an occupation, business or profession. Furthermore, moral character and fitness may form the basis for admission to the right to exercise an occupation or profession. *Hawker v. N. Y.*, 170 U. S. 189 (practice of medicine); *Douglas v. Noble*, 261 U. S. 165 (practice of dentistry). Nevertheless, the issuance of such a license and the admission to the privileges of such occupation, business or profession must be based upon reasonable conditions and may not be arbitrarily denied under the Fourteenth Amendment. See cases cited on page 4.

As the record will show, petitioner was denied admission to the practice of law in the State of Illinois by the Committee on Character and Fitness of the Third Appellate District, although his qualifications in all other respects were unquestioned, solely because he holds conscientious scruples against participation in war. This determination was upheld by the Illinois Supreme Court without opinion, and necessarily on the same grounds.

The petitioner set forth his views in detail in the hearing before the Committee on Character and Fitness, in which he disclosed that he is unwilling to participate in

war because of his religious and conscientious views, and that his local draft board had recognized the genuineness of his scruples by classifying him in Class IV-E as a conscientious objector. In making this determination the local draft board necessarily found that the petitioner's opposition to war is based upon "religious training and belief." The statute itself so requires. Section 5g of the Selective Training and Service Act of 1940 provides:

"Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

Thus the petitioner's opposition to war, for which the State of Illinois has rejected him as morally unfit to practice law, is based not upon personal whim or expediency, nor upon political or social views, but upon the deep and abiding compulsion of his inner religious convictions, since the demonstration of such a religious basis for conscientious objection is required in order to merit exemption. *U. S. v. Kauten*, 133 Fed. 2d 763, 768; *U. S. ex rel. Phillips v. Downer*, 135 Fed. 2d 521; *U. S. ex rel. Reel v. Badt*, 141 Fed. 2d 845.

The petitioner is therefore recognized as coming within the class of persons commonly called conscientious objectors, to whom Congress has seen fit to extend protection for their religious scruples, and there can be no question that a denial to the petitioner of rights to which he is otherwise entitled, solely because he is a conscientious objector, sharply interferes with his religious liberty.

It is no longer open to question that freedom of religion guaranteed under the First Amendment is protected

against State encroachment by the Fourteenth Amendment.  
*Barnette v. West Virginia*, 319 U. S. 624.

The infringement upon petitioner's liberties here involved is arbitrary, discriminatory and unreasonable, having no justification either in morals or reason, and therefore falls within the intendment of the Fourteenth Amendment prohibiting the denial of religious liberty without due process of law.

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Not only is petitioner deprived of his liberty by the action here complained of, but he is also deprived of a valuable right of property, namely, the right to engage in the practice of the law.

It has been held many times by this Court that the right to engage in such professions as the practice of medicine or dentistry, as well as other occupations and businesses, constitutes a right of property which may not be taken without due process of law under the Fourteenth Amendment. See cases cited above on page 4.

There can be hardly any question that property rights have been damaged, if not totally destroyed, when the petitioner has been prevented from entering upon the practice of a profession for which he has spent years of his time and much of his capital in preparation, and this deprivation of petitioner's property was made without the due process of law required by the Fourteenth Amendment, since based upon an arbitrary, discriminatory and unreasonable act which springs only from intolerance and has no foundation in reason or justice.

### POINT III

**The denial to petitioner, although otherwise qualified, of admission to the practice of law because of his conscientious scruples against participation in war was a denial of the equal protection of the laws secured by the Fourteenth Amendment.**

The equal protection of the laws requires that the laws of the State of Illinois governing admission to the practice of law be applied with equal hand to all qualified candidates for admission to the bar. It is unthinkable to our law that such great privileges as the right to practice the profession of law should be granted to some and withheld from others, equally fitted for that profession, solely on the basis of race, creed, color, religion or persuasion of belief. Indeed it is almost unthinkable that such a case as this could arise, except from the hysteria of war time, and even then no calm and judicial mind can fail to rise in outcry against the unfairness and intolerance of the discrimination here practiced against the petitioner by the State of Illinois.

While it is well understood that admission to the practice of law may be restricted to those who possess the necessary moral qualifications and good character, the test of moral fitness and character to be imposed must bear a reasonable relation to the ends sought to be attained, namely the preservation of high standards of ethics and integrity in the legal profession. There is no doubt, for instance, that exclusion from the bar on the basis of race would be a denial of equal protection of the laws under the Fourteenth Amendment, because the racial test would have no reasonable relation to the securing of proper standards for the

legal profession. See *Yick Wo v. Hopkins*, 118 U. S. 356 where a license to operate a laundry was denied to an applicant solely because he was Chinese, and *U. S. v. Hirabayashi*, 320 U. S. 81 (at page 100) involving the current racial discrimination against persons of Japanese ancestry on the West Coast.

Even more deeply ingrained in our constitution than protection against racial discrimination is the protection which that instrument affords against religious discrimination. If, therefore, one may not be excluded from an occupation or profession by reason of his race, certainly he may not be excluded by reason of his religious beliefs. That a man entertains unusual and unpopular religious beliefs is no ground for excluding him from the practice of law, since this bears no reasonable relation to his fitness to become a lawyer. On the contrary, the exemplary character in general of members of the Religious Society of Friends (Quakers) and other pacifist groups, is well recognized and has long been respected by public opinion and by the courts. See the dissenting opinion of Chief Justice HUGHES in *U. S. v. Macintosh*, 283 U. S. 605, 630-632, and the history of the Quaker colony of Pennsylvania.

In other states than Illinois, conscientious objectors have been freely admitted to the bar, and in New York their admission has even been expedited when they were about to be drafted. In general, pacifists have frequently been given positions of public trust, and include many eminent statesmen, judges and lawyers.

\* See, Cornell: *The Conscientious Objector and The Law*, pages 112-113, John Day Co., New York, 1943.



## CONCLUSION

It is therefore respectfully submitted that this Court grant the petition for certiorari in order to decide the novel and important constitutional question involved, and to protect and restore to the petitioner his constitutional rights.

Respectfully submitted,

JULIEN CORNELL,  
*Attorney for Petitioner.*

CLIFFORD FORSTER,  
*Of Counsel.*

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CHARLES ELMORE GROPLEY

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1944

**No. 205**

*In re* CLYDE WILSON SUMMERS,

*Petitioner.*

**REPLY BRIEF OF PETITIONER, REPLYING TO  
RETURN AND BRIEF OF THE JUSTICES OF THE  
SUPREME COURT OF ILLINOIS**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944

No. 205

*In re* CLYDE WILSON SUMMERS,

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**REPLY BRIEF OF PETITIONER, REPLYING TO  
RETURN AND BRIEF OF THE JUSTICES OF THE  
SUPREME COURT OF ILLINOIS**

Replying to Respondents' Point I—This Court has jurisdiction to review the determination of the Supreme Court of Illinois.

**A. This petition presents a case or controversy within the meaning of Article 3, Section 2 of the United States Constitution.**

An examination of the record will disclose that a case or controversy does exist in the Supreme Court of Illinois because that Court entertained the petitioner's application for admission to the bar and took judicial action thereon with regard to a subject within its jurisdiction. If there were any question that a proper case or controversy had not been presented to it, the Supreme Court of Illinois



could have refused to entertain the petitioner's application. But the application was entertained and a decision was rendered upon the merits. (See letter from the Chief Justice to petitioner dated September 20, 1943 and the admission in page 4 of the return that the determination was rendered upon the merits.) Having chosen to treat the petitioner's application as a case for judicial determination and having actually decided the case upon the merits the Supreme Court of Illinois has thereby established that a case or controversy exists which can be reviewed by this Court under Section 2 of Article 3 of the United States Constitution. The mere fact that the case was considered "informally" in the chambers of the Justices and that the record of the proceeding was not made public is irrelevant. This Court must look to what was done and not to the labels which have been applied.

Furthermore, applications for admission to the bar have always been regarded as judicial proceedings in the Supreme Court of Illinois and this case conforms to the usual practice.

It is well settled that the Supreme Court of Illinois in passing upon applications for admission to the bar exercises a judicial function in a judicial proceeding. *In re Day*, 181 Ill. 73 (1899), involved an original petition in the Supreme Court of Illinois for admission to the bar of that state. The Court not only entertained the petition but held that its functions with regard to such applications are judicial. See also *In re Frank*, 293 Ill. 263 (1920), where the Court entertained judicially an application for admission to the bar, and *Bradwell v. Illinois*, 55 Ill. 535, affd. 16 Wall. 130 (1873).

On many occasions the Supreme Court of Illinois has decided that proceedings for the admission, disbarment

and punishment by contempt of attorneys are judicial proceedings. Therefore, *a fortiori*, such proceedings are "cases or controversies." In a recent case where it punished for contempt of Court and enjoined the unlawful practice of law by a banking corporation, *People v. Peoples Stockyards Bank*, 344 Ill. 462 (1931), the Court said (p. 471):

"Since its inception this court has exercised original jurisdiction of proceedings relating to the admission and disbarment of attorneys, and although the constitutional provision [Article 6, Section 2 conferring original jurisdiction on the Supreme Court of Illinois in revenue, mandamus and habeas corpus cases] does not mention these subjects, the original jurisdiction of this court over such matters has never been questioned. This court has exercised original jurisdiction of applications for admission to the bar of this State (*In re Day, supra*) and in numerous cases has entertained original proceedings for disbarment."

See also *People ex rel. Chicago Bar Assn. v. Goodman*, 366 Ill. 346 (1937); *People ex rel. Chicago Bar Assn. v. Mosely*, 278 Ill. 377 (1917), and *People v. Novotny*, 386 Ill. 536, 540 (1944).

Under Illinois law, the legislative and executive branches of the government have no power over admission of attorneys to the bar, which is wholly a judicial function. *In re Day*, 181 Ill. 73 (*supra*).

Not only under the practice prevailing in the Supreme Court of Illinois but also in common-law courts generally, and so far as we can discover, in all statutory courts of the United States, admission to the bar has always been re-

\* Cf. *In the Matter of Cooper*, 22 N. Y. 67 (1860).

garded as a judicial proceeding: "(See *In re Secombe*, 19 How. 9 (1856); *In re Garland*, 4 Wall. 333 (1867); *Randall v. Brigham*, 7 Wall. 523, 535 (1869).)

Since the proceeding below constituted a judicial proceeding, it follows that this is a case or controversy within the meaning of Article 3, Section 2, of the United States Constitution. As this Court stated in *Osborn v. Bank of United States*, 9 Wheat. 738 (1824) at page 819:

"This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case . . . ."

See also *Marbury v. Madison*, 1 Cranch 137; Hughes, *Federal Practice*, § 240.

The respondents urge on page 21 of their brief that a "case" or "controversy" cannot exist here because this is not litigation involving opposing parties and susceptible of a judgment or decree. Respondents have apparently misunderstood the nature of this proceeding, which is an application by the petitioner *ex parte* for relief within the power of the Court, namely, its adjudication that he be admitted to the bar. In similar situations this Court has held that a case or controversy exists which confers jurisdiction upon the Federal Courts. *Neuberger v. U. S.*, 6 Fed. 2d 387 (D. C. S. D. N. Y., 1925) reversed *sub nom. Tutun v. U. S.*, 270 U. S. 568 (1926). In that case a petition for naturalization was held to present a case within the meaning of the Constitution and therefore reviewable on appeal, although

the proceeding involved a determination of status and was *ex parte*.

It is obvious that a "case" may arise although there is only one party and although his status is the subject matter of the proceeding.

**B. The petitioner has not invoked the original jurisdiction of this Court.**

The respondents argue on pages 22-23 of their brief that this proceeding cannot be entertained by original jurisdiction of this Court. Petitioner does not invoke such jurisdiction but has asked this Court to exercise its appellate jurisdiction (p. 3 of petition).

**Replying to Respondents' Point I, subdivision 3, and Point II—This case presents a substantial Federal question, namely whether the act of the Supreme Court of Illinois denying petitioner's application for admission to the bar violates the Fourteenth Amendment to the United States Constitution.**

The respondents have admitted that petitioner was denied admission to the bar of Illinois for the sole reason that he has asserted conscientious scruples against participation in war (p. 17 of respondents' brief). They have excluded petitioner from the practice of law (as shown by their return and by the record, which discloses no other ground) because he could not, they say, properly take the oath to support the Illinois constitution, which requires of its applicants for admission to the bar a willingness to bear arms in time of war. We are not concerned here with the correctness of the respondents' interpretation of Illinois law, since this Court is bound by the interpretation of its law which the highest Court of Illinois may adopt. We are

concerned only with the question whether Illinois law, as interpreted by its highest Court, and as applied to the petitioner, violates the Fourteenth Amendment.

The question, therefore, resolves itself to this: do the requirements of Illinois for admission to the bar as interpreted by its Supreme Court and as applied to the petitioner, deprive him of liberty and property and deny him the equal protection of the laws secured by the Fourteenth Amendment?\*

Respondents assert that no substantial Federal question is presented for two reasons: (1) that this question has been adversely decided in *U. S. v. Schwimmer*, 279 U. S. 644 and *U. S. v. Macintosh*, 283 U. S. 605, and (2) that the petitioner could not support the Illinois constitution because he would be unwilling to serve in the militia which is provided for by the constitution.

The *Schwimmer* and *Macintosh* cases involved merely the question whether Congress had intended to exclude pacifists from naturalization, a very different question from that here presented. Since the Constitution contains no restrictions upon the powers of Congress to impose conditions for naturalization, the question here presented by the petitioner was not raised and it could not have been raised in the *Macintosh* and *Schwimmer* cases.\*\*

\* For a general discussion of this problem, see *II Bill of Rights Review* (Spring, 1942), pages 209-218. See also *In the Matter of Bluestone*, 311 U. S. 685, where this Court declined to review the exclusion from the Pennsylvania bar of an alleged Communist and the Supreme Court of that state argued that he was rejected not solely as a Communist but "on the basis of the entire record."

\*\* Respondents have not mentioned another case which also has superficial resemblance to the case at bar, *Hamilton v. Board of Regents*, 293 U. S. 245 (1934), where it was held that a state could require military service in a state university without infringing the religious liberty of pacifist students. The decision turned on the fact that the state did not thereby deprive these students of their liberty, since they were free to pursue their studies elsewhere. Here, however, the petitioner is wholly excluded from the practice of law because the state has refused him a license, and this is an actual deprivation of his liberty.



Respondents' further argument that the oath required for admission to the bar implies a willingness to serve in the militia in time of war is also irrelevant, since we are not here concerned with the interpretation of the Illinois law, but with the question whether the law of Illinois as interpreted by its highest Court and as applied to the petitioner, deprives him of a constitutional right. In passing, we may point out, however, that the respondents have misconceived the requirements of their State for military service. Although the Illinois constitution does not contain any exemption from militia service in war time the legislature has not, at least since 1864, compelled war-time service in the militia. The unorganized or reserve militia of the state, both in the first World War and in the present conflict, has consisted only of volunteers. Illinois Laws of 1917, p. 782; Laws of 1943, Vol. 1, p. 1321 (Jones Ill. Statutes, Secs. 80.212 and 80.219 (2)).

## CONCLUSION

**This Court should set aside the determination of the Supreme Court of Illinois upon the ground that it deprives the petitioner of constitutional rights and should remand the case to the Supreme Court of Illinois for further proceedings in conformity with the decision of this Court.**

The petitioner does not ask this Court to order the Illinois Supreme Court to admit him to the bar of that State, for such relief would be beyond this Court's power. The petitioner asks only that the determination of the Illinois Court be set aside as a deprivation of petitioner's constitutional rights and that this Court remand the case

to the Illinois Supreme Court for further proceedings on his petition for admission to the bar in conformity with such decision as this Court may render.

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CHARLES ELMORE DROPLEY  
CLERK

# Supreme Court of the United States

OCTOBER TERM 1944

No. 205

IN RE CLYDE WILSON SUMMERS,  
*Petitioner.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF ILLINOIS

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## BRIEF OF PETITIONER


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# Supreme Court of the United States

OCTOBER TERM 1944

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No. 205

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IN RE CLYDE WILSON SUMMERS,  
*Petitioner.*

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF ILLINOIS

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## BRIEF OF PETITIONER

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### Opinion Below

No opinion was rendered by the court below other than the letter from the Chief Justice to the petitioner announcing the court's decision (R. 73-74) and there is no official report of any opinion.

### Jurisdiction

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code (28 U. S. C. Sec. 344-b) to review a final judgment or decree of the Supreme Court of Illinois on the ground that said court has denied to the petitioner rights secured to him under the Fourteenth Amendment of the United States Constitution. The deter-

mination under review was made on March 22, 1944 (S. R. 1).<sup>1</sup> The time within which to file the petition for certiorari, which would otherwise have expired June 22, 1944, was on that day extended by order of a justice of this court (R. 75), to June 29, 1944 and on the latter date the petition was filed (R. 76).

### Statement of the Case

Petitioner seeks review of a determination (R. 74) in which the Supreme Court of Illinois sustained the unfavorable report of its Committee on Character and Fitness and refused to admit the petitioner to the practice of law in that state. The Committee after questioning the petitioner refused to certify him as eligible for admission to the bar on the sole ground that he is a conscientious objector to participation in war by reason of his religious training and belief and had been classified as such by his draft board (R. 73, 74).

After completing a law school course and passing the usual examination given to candidates for the bar, the petitioner appeared before the Character Committee and a hearing was held with regard to his fitness to become a member of the bar (S. R. 2, *et seq.*). The petitioner was questioned only with regard to his religious beliefs in regard to war. There was no question raised that in all other respects he is fit to become a lawyer.

As he explained to the Character Committee, the petitioner registered for the draft and was classified by his draft board as a conscientious objector in Class IV-E, but he was not assigned to a camp for conscientious objectors because he failed his physical examination (S. R. 5).

<sup>1</sup>S. R. references are to the Supplemental Record printed pursuant to stipulation of counsel filed March 16, 1945.

The petitioner testified that he would be perfectly willing to engage in any service, such as that performed by the Quakers, so long as he did not have to work under military authority, explaining that he believed the whole military system to be contrary to God's laws, since it is designed for the destruction of human beings (S. R. 23, 24, 39, 40).

The members of the Committee expressed the opinion that since the exercise of police power involves the use of force, the petitioner as a lawyer might be required to use force even to the extent of taking human life. The petitioner disagreed with this view, stating that a lawyer could uphold the law without taking human life (S. R. 25, 30, 31, 32, 33, 41).

In January, 1943, petitioner was informed that a majority of the Committee on Character and Fitness had declined to sign a certificate as to his character and fitness for admission to the bar; and that in the absence of such a certificate, the Board of Bar Examiners would not certify him to the Supreme Court for admission (R. 3). No findings were made by the Committee, nor any opinion given.

The reasons for the adverse report of the Committee are disclosed in a letter sent to the petitioner by a member of the Committee (R. 56-57) in which the position was taken that a lawyer must be prepared to use force in the administration and enforcement of the law, and therefore cannot properly take an oath to support the constitution if he is unwilling to use force under all circumstances. The sincerity of petitioner's views was not questioned.

Thereafter the petitioner filed in the Supreme Court of Illinois a petition praying that he be admitted to the bar, and he attached exhibits, which included the stenographic transcript of the hearing before the Character Committee (S. R. 2-47), and affidavits of good moral character (R. 61-73). The Supreme Court of Illinois denied



the petition and announced its decision in a letter from the Chief Justice to the petitioner dated September 20, 1943 (R. 74) in these words: "I am directed to advise you that the court is of the opinion that the report of the Committee on Character and Fitness should be sustained." Subsequently petitioner filed a petition for reconsideration of this determination which was denied on March 22, 1944 (S. R. 1).

On June 29, 1944, petitioner filed a petition for a writ of certiorari (R. 76) after having obtained an extension of seven days (R. 75). The petition was granted December 11, 1944, by this court (R. 76) and the writ issued (R. 76) pursuant to which the record herein was certified to this court.

### **Specification of Assigned Errors**

No errors were assigned in the court below (the Supreme Court of Illinois) because this was an original proceeding in that court. The petitioner intends to urge all the points which were argued in the petition filed in the court below consisting of points numbered 1 to 6 inclusive (R. 28-30). In substance these points raise the following issue:

The denial to petitioner of admission to the bar because he is a conscientious objector interferes with his religious freedom, denies him the equal protection of the laws and deprives him of liberty and property without due process of law in violation of the Fourteenth Amendment.

## ARGUMENT

### POINT I

**This court has jurisdiction to review the determination of the court below.**

The jurisdiction of this court to review this proceeding is here discussed because the respondents upon consideration of the petition for certiorari filed a brief in which they questioned this court's jurisdiction.

**(a) The proceeding below is a case or controversy within the meaning of Article 3, Section 2 of the United States Constitution.**

The proceeding for admission to the bar in Illinois is similar to that which prevails in most states. Applicants are required to pass examinations showing their proficiency and knowledge of the law and must also appear before a committee which inquires into their character and makes a report in which they are certified either as fit or unfit to be admitted to the practice of law. Rule 58 of Rules of the Supreme Court of Illinois.

In the present case the petitioner passed the examination (R. 2) and appeared before the Character Committee which examined his character and raised no question regarding it except the question that he is a conscientious objector (S. R. 2, *et seq.*) which was discussed at length in a hearing before the Committee. The Character Committee then refused to issue a certificate that the petitioner is possessed of the requisite character and fitness to be admitted to the bar (R. 3); whereupon the petitioner filed a petition with the Supreme Court, whose creature the Character Committee is, asking that he be admitted to the bar notwithstanding the adverse recom-

mendation of the Committee (R. 1-56). The petition was entertained by the court and was denied (R. 74), apparently upon the same ground as that taken by the Character Committee.

This denial was a judicial act of the Illinois Supreme Court. For although in most states admission to the bar, like the granting of other licenses and privileges to engage in particular occupations, is a function of the legislature (see *In the Matter of Cooper*, 22 N. Y. 67 (1860)), in Illinois it has always been held that admission to the bar is a judicial function within the sole province of the Supreme Court. *In re Day*, 181 Ill. 73 (1899). This rule is derived from the Illinois constitution Article 6 Section 2 which confers original jurisdiction on the Supreme Court of Illinois in certain cases and has been held to extend to admission to the bar. *People v. Peoples Stockyards Bank*, 344 Ill. 462 (1931). *In re Day*, cited above, involved an original petition in the Supreme Court of Illinois for admission to the bar of that state. The court not only entertained the petition but held that its functions, with regard to such applications, are judicial. See *In re Frank*, 293 Ill. 263 (1920), where the court entertained judicially an application for admission to the bar, and *Bradwell v. Illinois*, 55 Ill. 535 (1869), affd. 16 Wall. 139. And in a recent case where it punished for contempt of court and enjoined the unlawful practice of law by a banking corporation, *People v. Peoples Stockyards Bank*, 344 Ill. 462 (1931), that court said (p. 471):

"Since its inception this court has exercised original jurisdiction of proceedings relating to the admission and disbarment of attorneys, and although the constitutional provision [Article 6, Section 2 conferring original jurisdiction on the Supreme Court of Illinois in revenue, mandamus and habeas corpus cases] does not mention these subjects, the original jurisdiction of this court over such matters has never been questioned. This court has exercised

original jurisdiction of applications for admission to the bar of this State (*In re Day, supra*) and in numerous cases has entertained original proceedings for disbarment."

See also *People ex rel. Chicago Bar Assn. v. Goodman*, 366 Ill. 346 (1937); *People ex rel. Chicago Bar Assn. v. Moseley*, 278 Ill. 377 (1917); *People v. Novakny*, 386 Ill. 536, 540 (1944); *People ex rel. Chicago Bar Ass'n v. Amos*, 246 Ill. 299, 301 (1910).

These cases make it clear that the Illinois court in admitting to the bar or refusing such admission, is not merely exercising administrative control over the fraternity of lawyers, as leading members of that fraternity, but is exercising a judicial function vested in it by the constitution of the state, namely, the determination of qualifications of persons desirous of receiving from the state the privilege of practicing law. The power of the organized bar has been such that admission to the bar has always been largely under the control of lawyers and judges, and they have at times sought to make that control exclusive. *Bradwell v. Illinois*, 16 Wall. 130. But it is nevertheless clear that admission to the bar, like the granting of a license to practice medicine or a franchise to operate a street railway, is a grant by the state to its citizens which does not rest within the exclusive control of those who have already received such a grant.

Moreover, this court has recognized many times that admission to the bar is the exercise of a judicial power. *In re Secombe*, 19 How. 9, 13; *Ex parte Robinson*, 19 Wall. 505; *Ex parte Garland*, 4 Wall. 333, 370; *Randall v. Brigham*, 7 Wall. 523, 535.

And even in England, where admission to the bar is not a judicial act, it is reviewable in the courts. The four Inns of Court control the calling to the bar of barristers and the Law Society exercises similar control over the creation of solicitors. However, the judges of the common law

courts, acting as-visitors of the Inns and the Law Society, exercise the power of review:

"The decisions of the benchers are not subject to review in any Court of Justice, but an appeal from them lay, before the Judicature Act, 1873, to the Lord Chancellor and the judges of the Superior Courts of Common Law, and now lies to the Lord Chancellor and the judges of the High Court of Justice sitting as a domestic tribunal." Marchant, *Barrister-at-Law*, p. 5. London 1905.

See also Harvey's case (1821) which is discussed in Pearce, *Inns of Court*, London, 1855, pages 405-411.

Since the proceeding below constituted a judicial proceeding, it follows that this is a case or controversy within the meaning of Article 3, Section 2, of the United States Constitution. As this Court stated in *Osborn v. Bank of United States*, 9 Wheat. 738 at page 819:

"This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case . . . ."

See also *Marbury v. Madison*, 1 Cranch 137; Hughes, *Federal Practice*, § 240;

The argument made by respondents that a "case" or "controversy" cannot exist here because this is not litigation involving opposing parties and susceptible of a judgment or decree is based on a misunderstanding of the nature of this proceeding. This proceeding is an application by the petitioner *ex parte* for relief within the power of the Illinois Supreme Court, namely, its adjudication that



he be admitted to the bar. It seems obvious that a "case" may arise although there is only one party and his status is the subject matter of the proceeding. And in analogous situations this court has held that a case or controversy exists which confers jurisdiction upon the Federal Courts. In *Tutun v. U. S.*, 270 U. S. 568, a petition for naturalization was held to present a case within the meaning of the Constitution and therefore reviewable on appeal although the proceeding involved a determination of status and was *ex parte*. The court said:

"Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the constitution, whether the subject of the litigation be property or status" (p. 577).

We feel that the nature of the legal proceeding involved in a petition for naturalization is substantially identical to that involved in an application for admission to the bar.

Furthermore, if there were any question that a proper case or controversy had not been presented to it, the Supreme Court of Illinois could have refused to entertain the petitioner's application. But the application was entertained and a decision was rendered upon the merits. (See letter from the Chief Justice to petitioner (R. 74)). Having chosen to treat the petitioner's application as a case for judicial determination and having actually decided the case upon the merits the Supreme Court of Illinois has thereby established that a case or controversy exists which can be reviewed by this court under section 2 of Article 3 of the United States Constitution. The mere fact that the case was considered "informally" in the chambers of the Justices and that the record of the proceeding was not made public is irrelevant. This court must look to what was done and not to the labels which have been applied.

**(b) The denial by the Illinois Supreme Court of a petition for admission to the bar is the act of a state within the intendment of the Fourteenth Amendment and presents a question reviewable by this court.**

The Fourteenth Amendment affords protection only against state action, but the action complained of need not be legislative or executive. It may be the judicial act of a court with regard to a single controversy before it such as is involved in the present case. This court has often reviewed injunctions and contempts of court which have been challenged as being in violation of freedom of speech. *American Federation of Labor v. Swing*, 312 U. S. 12, 21; *Bridges v. California*, 314 U. S. 252; Cf. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Mooney v. Holohan*, 294 U. S. 103.

## POINT II

**Petitioner has been denied the equal protection of the laws and deprived of liberty and property without due process of law in violation of the Fourteenth Amendment, in having been refused admission to the bar of Illinois solely because he is a conscientious objector.**

At the outset, it should be noted that the ordinary presumption of constitutionality of official acts does not apply in civil liberties cases, whether the acts involved are legislative or judicial. *American Federation of Labor v. Swing*, *Bridges v. California*, *supra*. See *Board of Education v. Barnette*, 319 U. S. 624; *Thomas v. Collins*, 65 Sup. Ct. 315 (Oct. term, 1944, No. 14); *Schneider v. State*, 308 U. S. 147.

**(a) The action complained of interferes with the petitioner's religious freedom.**

The religious freedom which is protected against infringement by Congress under the First Amendment is

one of the liberties in which the citizen is protected under the Fourteenth Amendment against interference by a state. See *Cantwell v. Connecticut*, 310 U. S. 296.

The petitioner has been denied admission to the bar by the State of Illinois solely because he is a conscientious objector. The petitioner claimed exemption from military service under Section 5 (g) of the Selective Training and Service Act of 1940, which provides such exemption for any person who "by reason of religious training and belief, is conscientiously opposed to participation in war in any form." The petitioner's claim was recognized by his draft board and he was classified in Class IV-E, the class for conscientious objectors opposed to combatant and non-combatant service (S. R. 5).

It is therefore established both by the action of the draft board and the further explanation given by the petitioner to the Character Committee (S. R. 23, 24, 39, 40) that petitioner's conscientious scruples against participation in war are part of his religious beliefs. See *United States v. Katzen*, 133 Fed. 2d 703 (C. C. A. 2nd, 1943), where the religious nature of such beliefs is discussed. It was solely because of these beliefs that petitioner was excluded from the practice of law in Illinois; no suggestion of any other ground for exclusion appears in the record, and it is affirmatively shown that petitioner was in all other respects well qualified.

The question before this court is, therefore, whether a state may penalize a person for the holding of an unpopular religious belief by denying him the right to practice law.

There is no question of interference with the petitioner's freedom to act in accordance with his religious beliefs since he is protected therein by the draft law. This is solely a question of petitioner's freedom to hold a religious belief. For this reason, we are not concerned

here with the limitations upon freedom to act which are recognized in such cases as *Hamilton v. Regents*, 293 U. S. 245, and the *Selective Draft Law* cases, 245 U. S. 366. As was said in *Cantwell v. Connecticut*, 310 U. S. 296, 303:

"The constitutional inhibition of legislation on the subject of religion has a double aspect. . . . The [Fourteenth] Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."

See also *Board of Education v. Barnette*, 319 U. S. 624.

Freedom of religious belief being foremost among the liberties which led to the establishment of our Constitution, it has been protected under that document with special care. In matters of conscience, the state has no power of regulation and may not interfere with the sacred right of an individual to recognize and follow a duty which is higher than his duty to the state, his duty to God. A most eloquent statement of these principles, as applied to a conflict between the demands of the state and the conscience of the citizen, may be found in the dissenting opinion of Chief Justice HUGHES in *United States v. Macintosh*, 283 U. S. 605, 627-635.

More recently the Supreme Court of New Jersey has had occasion to apply these principles to a situation similar to the one here presented. *Morgan v. Civil Service Comm.*, 131 N. J. Law 411 (1944). In that case, as here, a state had denied a position of public trust to a citizen solely because of his religious beliefs. The New Jersey Civil Service Commission had refused to appoint him bridge attendant, although he would have otherwise been entitled to the appointment, solely because he was a Jehovah's Witness and had declared his unwillingness to salute the flag of the United States while asserting his allegiance to

the government and to the principles which the flag represents. The court said (p. 413):

"The cherished constitutional liberties guaranteed against impairment by State action prohibit governmental intrusions into the consciences of men. Government may not command individual belief or declaration of belief contrary to faith; nor may it enjoin the harboring of thoughts contrary to one's convictions. The mind and spirit of man remain forever free, while his actions rest subject to necessary accommodations to the competing needs of his fellows.' *Jones v. City of Opelika*, 316 U. S. 584."

And the opinion makes plain that the sort of discrimination for religious belief which is here involved is prohibited by the Bill of Rights (p. 417):

"The cited guarantees of personal liberty plainly forbid disqualification from the public service for one's religious or political opinions."

It may be argued that the interference with religious liberty complained of has been permitted by this court in *Hamilton v. Regents*, 293 U. S. 245, *supra*. In that case it was held that a state did not deprive pacifist students of liberty by requiring military training in a state university because they were free to secure their education elsewhere in the state. In this case, however, petitioner is wholly excluded from the practice of law in Illinois.

Similarly the cases of *U. S. v. Schwimmer*, 279 U. S. 644, and *U. S. v. Macintosh*, 283 U. S. 605 have no application here. Those cases involved merely the question whether Congress in the exercise of a power granted it by the Constitution had intended to exclude pacifists from naturalization, a very different question from that presented in the instant case. Since the Constitution contains no restrictions upon the powers of Congress to impose conditions on naturalization, the question presented by the pe-



petitioner was not raised and it could not have been raised in the *Macintosh* and *Schwimmer* cases.

Moreover, the dissenting opinions in the *Macintosh* and *Schwimmer* cases may today be regarded as more nearly expressing the course which the law should take. See the majority and dissenting opinions in *Schneiderman v. U. S.*, 320 U. S. 118.

**(b) The petitioner has been denied the equal protection of the laws.**

The general meaning and purpose of the equal protection clause has often been considered and is well known to this court. This clause was designed to secure every person against intentional and arbitrary discrimination whether by the state or its agents in regard to his privileges as well as his rights. *Truax v. Raich*, 239 U. S. 33.

The provision of the Fourteenth Amendment for equal protection of the laws requires in this instance that the laws of Illinois governing admission to the bar shall be applied with equal hand and without discrimination. All candidates for the bar who possess the necessary qualifications must be admitted; none may be excluded because of race, creed, religion or upon any other basis which bears no reasonable relation to fitness for the profession. While the Fourteenth Amendment does not require that all persons shall be treated the same, it does demand that they shall be treated equally under the law. Only those distinctions are permitted which have some relation to the ends sought to be achieved. *Smith v. Texas*, 233 U. S. 630, 636. Distinctions which arise from prejudice whether it be economic, political, racial or religious are prohibited. *Lawton v. Steele*, 152 U. S. 133; *Meyer v. Nebraska*, 262 U. S. 390; *Korematsu v. U. S.*, 323 U. S. 214.

The commonest of all discriminations are those which derive from racial and religious differences. Firmly embedded in the Constitution is the requirement that the laws of a state may not discriminate between persons upon the basis of race or religious persuasion. These principles have been frequently uttered by this court and carefully safeguarded by its decisions. They are the very cornerstone upon which civil liberties have been built.

In *Yick Wo v. Hopkins*, 118 U. S. 356, this Court held that an applicant could not be denied a license to operate a laundry solely because he was Chinese, for such action constituted a denial of equal protection of the laws under the Fourteenth Amendment. See also *U. S. v. Hirabayashi*, 320 U. S. 81 (at p. 100) and *Korematsu v. U. S.* 323 U. S. 214 involving discrimination against persons of Japanese ancestry on the West Coast.

Similarly in *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, this court decided that a state could not exclude a person from a state law school because he was a Negro if it did not at least provide other law schools of comparable standards for Negroes. This action was held to be a denial of equal protection of the laws even though provisions were made for the state to pay transportation expenses and tuition of Negroes at law schools in any adjacent state. See also *Bluford v. Canada*, 32 Fed. Supp. 707 (D. C. Mo., 1940) appeal dismissed 119 Fed. 2d 779 (C. C. A. 8th, 1941).

Moreover, in *Chaires v. City of Atlanta*, 164 Ga. 755 (1927), an ordinance prohibiting colored barbers from serving white children was held to violate the equal protection clause of the Fourteenth Amendment. And in *Alston v. School Board*, 112 Fed. 2d 992 (C. C. A. 4th, 1940) it was decided that the payment of Negro teachers at a lower rate than white teachers of equal ability was a denial of equal protection of the laws. See also *Templar v. State Board*, 131 Mich. 254 (1902), where a state law

requiring an applicant for a barber's license to be a citizen of the United States was held to deny the equal protection of the laws.

Under these cases it is clear that exclusion from the practice of law on the basis of race would be a denial of equal protection of the laws under the Fourteenth Amendment because the racial test would have no reasonable relation to the securing of high standards of ethics and proficiency in the legal profession. Similarly, a man's religious beliefs bear no reasonable relation to these standards and to exclude him from the practice of law because of them is, therefore, an arbitrary discrimination in violation of the equal protection clause. This was the holding in the recent New Jersey case, *Morgan v. Civil Service Commission*, 131 N. J. Law 411, 414-415 (1944), cited above, where the denial to a Jehovah's Witness of a public office, for the sole reason that he was unwilling for religious reasons to salute the flag, was held to be a denial of equal protection of the laws in violation of the Fourteenth Amendment.

In its arguments the State of Illinois has been unable to establish any relationship between petitioner's religious belief against participation in war and his fitness to become a lawyer.

From an examination of the transcript of the hearing before the Character Committee, it appears that the members of the Committee regarded petitioner as unfit to become a lawyer because they took the view that a lawyer must be prepared, as an officer of the court, to administer and enforce the law with such force as may be necessary (S. R. 32). The Committee argued that the taking of human life might, under certain circumstances, be required of a lawyer, and questioned the petitioner with regard to his willingness, if he were a prosecutor, to demand the death penalty (S. R. 41) and also his willingness to dispossess a homeless family in aid of a client (S. R. 41).

The position of the Character Committee that a lawyer must be prepared to uphold the police power, even by violence, presents an artificial picture of the lawyer's function. While it may be that police officers occasionally must resort to violence, although even this is questionable and in England the police go unarmed, there is no reason to assume that a lawyer must exercise the functions of the police to any greater extent than any other citizen. The lawyer is not the officer of the executive branch of the government, whose duty it is to exercise police power, but he is the officer of the court, a judicial agency, whose duty it is to resolve disputes and not to enforce the laws. The Character Committee has apparently misunderstood the difference between judicial and executive functions; the police power falls entirely in the latter category.

Moreover, opposition to the violent slaughter of soldiers and civilians which results from warfare is a very different thing from the problem posed by the occasional criminal who can be subdued only by the use of black jack or pistol. So long as he believes in the orderly processes of government and in the proper execution of the laws, a pacifist is surely able to support the laws and the constitution regardless of what attitude he may take in the event of war, which represents a total break down of law and order. Indeed it might be said that the pacifist is more disposed to uphold law and order than the militarist, since the pacifist would insist upon moral law in all situations, whereas the militarist recognizes a point where law breaks down and disputes must be settled outside the law by means of force.

And even assuming that a lawyer might find himself in a situation where his client required a resorting to force which he could not stomach, it is always the privilege of the lawyer to decline to accept a case which for personal reasons he feels he cannot properly handle.

In addition, an examination of the canons of professional ethics, which set forth the principles of conduct for lawyers, reveals nothing which would require a lawyer to undertake police functions or at any time to indulge in the use of force. There is nothing in the record which indicates that the petitioner could not wholeheartedly subscribe to these canons, nor is there anything in the record which would indicate that he could not perform all the duties of a lawyer and a citizen.

The fact that a pacifist can perform these duties was early recognized in England by statute, 12 George 2, Chap. 13, Sec. 8. It was provided that Quakers, who were then entirely pacifist, might be admitted to enrollment as attorneys or solicitors by the taking of an affirmation instead of the oath generally required. While the purpose of this statute was to relieve Quakers from the requirement of taking the oath, the mere existence of the statute is a tacit recognition of the prevailing state of public opinion under which Quakers were freely admitted to the practice of law despite their pacifism. If there had been any public doubt about the qualifications of Quakers to become lawyers, surely a statute would not have been passed to facilitate their admission to the bar. We have found no case either in England or the United States where a Quaker or other pacifist has been held to be ineligible for admission to the bar or indeed for any other public office.

The respondents have argued in their brief in connection with the petition for certiorari that petitioner was not qualified for admission to the bar because he could not properly take the oath to support the Illinois constitution, which contains a provision for militia service. This question was not raised before the Character Committee, nor was it, so far as the record discloses, a ground for the decision of the Supreme Court of Illinois. Since this issue was not raised below, it should not be countenanced here.



But even if this contention may properly be raised at this time, it is wholly lacking in merit. While a lawyer is required to support the constitution and the laws of the state, this has to do with his attachment generally to the principles of government. Religious scruples which may impel the individual to request exemption from military duties generally imposed upon citizens, have nothing to do with the individual's support in general of the principles of our government. See the dissenting opinion of Chief Justice HUGHES in *U. S. v. Macintosh*, 283 U. S. 605, 630-632.

Recent recognition of this may be found in a ruling of the Civil Service Commission contained in Departmental Circular No. 286 issued November 8, 1941, which provides that the classification of a person as a conscientious objector "is not a bar to his reinstatement or employment in the Federal service. A claim of conscientious objection recognized and approved by the government under the Selective Training and Service Act does not indicate such a 'mental reservation or purpose of evasion' as would make the taking of an oath of office under Title 5, Section 16 of the United States Code an invalid act."

The oath referred to is the oath prescribed for appointment to office under the United States which requires the affiant to swear that he will "support and defend the Constitution of the United States against all enemies, foreign and domestic." The Civil Service Commission has ruled that a conscientious objector may take such an oath. Similarly a lawyer may take an oath to support and defend the constitution, as did the writer of this brief, without being willing to engage in the bearing of arms.

Furthermore, it cannot be said that the petitioner is unable to subscribe even in a personal way to the militia provisions of the Illinois constitution. Sections 1-6 of Article XII of that document give to the legislature the

power to require militia service, but specifically exempt conscientious objectors from militia service in time of peace, and "such persons as now are or hereafter may be exempted by the laws of the United States." However, the Illinois legislature has not in recent times seen fit to exercise this power and the militia of Illinois has consisted only of volunteers both in the first World War and in the present conflict, as well as in time of peace. *Illinois Laws of 1917*, p. 782; *Laws of 1943*, Vol. I, p. 1321; Vol. 14 *Illinois Statutes*, Secs. 80.219 (2), 80.219 (4), (1944 Supp.):

The Illinois constitution is not a self-executing document but merely a grant of power, including a grant to the legislature of the power to organize and call forth the militia. But as the legislature has provided only for voluntary militia service, and petitioner in any event would be exempt, he could comply with this provision of the Illinois constitution.

We have shown that a realistic appraisal of the functions of a lawyer indicates that his attitude toward force, and particularly toward the violent force of warfare, has no relation to the practice of law and therefore cannot enter into the qualifications of a lawyer.<sup>1</sup>

If further proof were needed of the fact that a pacifist may properly become a lawyer, it can be found in the popular recognition which has been given to many pacifists who have achieved eminence not only in the legal profession, but in other fields of human endeavor.

<sup>1</sup> In the case of *In re Sullivan*, 57 Mont. 592 (1920), Attorney Sullivan, while not a pacifist, was apparently a political objector to the last war. For this reason, objections to his admission to the bar were lodged with the Montana Supreme Court. The Court ordered that he be suspended for a short period, but said,

"However, we are not prepared to say that the applicant is so far deficient in moral character that he cannot become a useful member of society and an honorable and useful member of the bar of this state. . . . he may be reinstated upon a satisfactory showing that he is a man of good character and worthy of the respect and confidence of his fellow men." (p. 593)

(c) The petitioner has been deprived of liberty and property without due process of law.

It has frequently been held by this court that every citizen has a right to engage in any lawful occupation, subject to reasonable regulations which may be imposed by the state for the public welfare, and that any infringement of that right is a deprivation of liberty and property protected by the Fourteenth Amendment. This principle was stated in *Dent v. West Virginia*, 129 U. S. 114, which involved the validity of a statute prescribing conditions for the practice of medicine.

"It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are open to every one on like conditions" (at p. 121).

Likewise this court stated in *Allgeyer v. Louisiana*, 165 U. S. 578, 589, in language which has often been quoted:

"The liberty mentioned in that amendment . . . is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, . . ."

The right to engage in any lawful calling has been given the protection of the Fourteenth Amendment in many cases involving a variety of occupations and professions. See *Fick Wo v. Hopkins*, 118 U. S. 356 (operation of a laundry); *Mayflower Farms v. Ten Eyck*, 297 U. S. 266 (price-fixing of milk); *Smith v. Texas*, 233 U. S. 630 (railroad brakeman); *Loggett v. Baldrige*, 278 U. S. 103 (pharmacy);

*Dent v. West Virginia*, 129 U. S. 114 (medicine); *Hurwitz v. North*, 271 U. S. 40 (medicine); *Semmler v. Oregon State Board*, 294 U. S. 608 (dentistry); *Stanley v. Public Utilities Comm.*, 295 U. S. 76 (motor carriers).

The principle of the foregoing cases applies equally to the legal profession as to other professions and occupations. However, this court has never had occasion to apply this principle to the legal profession. The cases in which this court has considered the disbarment of attorneys or denial of admission to the bar either arose before the adoption of the Fourteenth Amendment or were considered under the privileges and immunities clause of that amendment, which has been held to extend only to rights inherent in Federal citizenship and would not therefore protect the right to practice law. See: *In re Secombe*, 19 How. 9; *Bradwell v. Illinois*, 16 Wall. 130; *In re Lockwood*, 154 U. S. 116.<sup>1</sup> See also cases cited *supra*, p. 7.

It seems clear that the practice of law, like the right to engage in other occupations which have been the subject of decisions of this court under the Fourteenth Amendment, is a liberty of the citizen which is protected by that amendment. Under the principle stated above, the citizen has the right to engage in any lawful occupation or profession, and this right is one of his liberties which cannot be taken away without due process of law.

There may be some question as to whether the practice of law is also a property right. It is held generally that the right to engage in business is a property right within the meaning of the Fourteenth Amendment. Similarly, it may be argued that the right to engage in the practice of law, since it is also a means to a livelihood, involves rights of property, although we have found no decision in this

<sup>1</sup> The *Bradwell* and *Lockwood* cases, cited in the text, leave open the question whether admission to the bar is a privilege of state citizenship which would be protected by the due process clause of the Fourteenth Amendment.

court touching on that point, and there are decisions in state courts to the effect that the practice of law is not a property right. Cf. *Ex parte Wall*, 107 U. S. 265, 289, where the court stated among other things;

"Conceding that an attorney's calling or profession is his property within the true sense and meaning of the constitution \* \* \*"

As society becomes more economically complex, it appears artificial to draw a distinction between those rights of property which inhere in tangible assets and those which consist of learning and skill. While the tools of the lawyer's trade are intangible and will not survive him, they are none the less valuable and productive assets. It is not necessary, however, to press this point since the Fourteenth Amendment protects liberty, as well as property, and there can be no doubt that the right to engage in the legal profession is a liberty even though it may not be regarded as a property right.

It remains only to be shown that the petitioner's liberty and perhaps also his property has been taken away without due process of law. But we need not recite how "due process" has been expanded to include protection against all arbitrary government action. See Warren, *The New Liberty Under The Fourteenth Amendment* (1926), 39 *Harvard Law Review*, 43. As has been pointed out above with regard to the equal protection clause, the ground given for excluding the petitioner from the practice of law has no reasonable relation to his fitness for the profession. The test applied to the petitioner is, therefore, arbitrary and unreasonable and not in accordance with due process of law. See: *Douglas et al. v. Noble*, 261 U. S. 165; *Smith v. Texas*, 233 U. S. 630, 636.



## CONCLUSION

This court should set aside the determination of the Supreme Court of Illinois upon the ground that it deprives the petitioner of constitutional rights and should remand the case to the Supreme Court of Illinois for further proceedings in conformity with the decision of this court.

The petitioner asks that the determination of the Illinois court be set aside as a deprivation of petitioner's constitutional rights and that this court remand the case to the Illinois Supreme Court for further proceedings on his petition for admission to the bar in conformity with such decision as this court may render.

Respectfully submitted,

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**APPENDIX I****CONSTITUTION OF ILLINOIS, ART. XII, SEC. 1**

"The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state."

**CONSTITUTION OF ILLINOIS, ART. XII, SEC. 6.**

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption."

## APPENDIX II

### VOL. 14 JONES ILLINOIS STATUTES

#### (1944 SUPPLEMENT)

#### MILITARY AND NAVAL AFFAIRS

##### **Sec. 80.219(2). Power of Governor to create Illinois Reserve Militia. § 2**

Whenever the Governor as Commander-in-Chief of the Military and Naval Forces of the State, deems it necessary or advisable for the purpose of executing the laws of the State, or of preventing actual or threatened violations thereof, such as suppressing actual or threatened insurrection, invasion, tumults, riots or mobs, or when the Nation is at war and a requisition or order has been made, or is likely to be made, by the President of the United States calling the National Guard, or parts thereof, into the National service, or for any other emergency, he may issue a proclamation or call for volunteer companies, battalions, regiments, brigades, or other units of land and air forces to be known as the Illinois Reserve Militia which shall be formed and organized from the unorganized militia of the State, consisting of all able-bodied male citizens between the ages of 18 and 45 years, and of other able-bodied male citizens between the ages of 45 and 55 years, as enlisted men, and of commissioned officers and warrant officers, when made necessary by an emergency.

##### **Sec. 80.219(4). Persons of which militia shall consist. § 4**

The Illinois Reserve Militia shall consist of the regularly enlisted male citizens between the ages of eighteen and fifty-five years, and of commissioned officers and warrant officers between the ages of twenty-one and sixty-four years, organized, armed and equipped as prescribed by such rules and regulations, Tables of Organization, and Tables of Equipment, as may be from time to time promulgated by the Adjutant General, and approved by the Governor, which shall conform to any existing regulations prescribed by the Secretary of War of the United States.

## APPENDIX III

### RULES OF PRACTICE AND PROCEDURE OF THE SUPREME COURT OF ILLINOIS

#### RULE 58

#### ADMISSION TO THE BAR

The following order was entered by the Court on January 21, 1942:

#### ORDER

IT IS ORDERED that for the duration of the war and until the further order of the Court, the Board of Law Examiners is authorized to administer Rule 58 governing admission to the bar as follows:

(1) The final semester of law school study may be waived in the case of applicants for the bar examination who are about to enter the armed forces of the United States and will for that reason be unable to complete their law studies in accordance with the present requirements of the rule.

(2) Applicants failing to pass a satisfactory examination in September or December, 1941, or thereafter while the United States is at war, who enter the armed forces of the United States before the examination next following such failure, shall be re-examined only in the subjects on which they failed to pass a satisfactory examination. The first re-examination shall be without additional fee.

(3) Law students about to enter the armed forces of the United States who have satisfactorily completed two-thirds of the work required for graduation from law school, as evidenced by certificate of a law school or schools, may be permitted to enter the bar examination to be examined, however, only on the subjects enumerated in Rule 58 which they

have completed. If they enter the armed forces before they have completed their law study in accordance with Rule 58, they shall be re-examined for admission to the bar after completion of the required law study only in the subjects on which they failed to pass a satisfactory examination and the subjects in which they were not previously examined. The filing fee in such cases shall be \$20.00 and no fee shall be required for the first re-examination.

(4) In addition to the two examinations prescribed by Rule 58, the Board of Law Examiners may in its discretion conduct other examinations and all such examinations may be held at such times and at such places as the Board of Law Examiners shall deem proper. (Order of January 21, 1942.)

#### SECTION I.—*General Qualifications*

Persons may be admitted to practice as attorneys and counselors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners or have been licensed to practice law in another state, territory, the District of Columbia or in certain foreign jurisdictions. All subject, however, to the terms and requirements hereinafter contained in this rule.

#### SECTION II.—*Board of Law Examiners*

1. The present members of the Board of Law Examiners shall be continued in office until the expiration of the terms for which they were appointed. The Board shall thereafter consist of five members of the Bar, appointed by the Supreme Court, and each shall serve a term of three years and until his successor is duly appointed and qualified. Two members of the Board shall be appointed from the First Appellate Court District and one member from each



of the Second, Third and Fourth Appellate Court Districts. Each member of the Board, upon his appointment, shall make and file with the Clerk of the Supreme Court his oath faithfully to discharge the duties of his office.

2. A majority of the Board shall constitute a quorum. A President, Secretary and Treasurer shall be annually elected. One member may hold the office of both Secretary and Treasurer.

3. The members of the Board and the officers thereof shall receive such salaries as the Court may provide and such further sum for necessary disbursements as may be approved by the Court, all payable out of moneys received from applicants for admission to the Bar as fees for examination and admission.

4. The Board shall audit annually the accounts of its Treasurer and shall report to the Court at each November term a detailed statement of its finances, together with such recommendations as shall seem advisable. All fees paid into the Board in excess of its expenses shall be applied as the Court may, from time to time direct.

### SECTION III.—*Educational Requirements.*

Every applicant seeking admission to the Bar of Illinois on examination shall meet the following educational requirements and shall make proof thereof in the manner following:

1. Preliminary and college work: Each applicant shall have graduated from a four year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois; and after such high school or preparatory school graduation shall have satisfactorily completed at least seventy-two weeks of general college work while in actual attendance at one or more colleges or universities ac-

credited by the Board of Law Examiners, or shall have completed such work, as is recognized by the Board as the equivalent of such general college work.

*Proof:* Proof of such preliminary education shall be made either by diploma showing such graduation or by certificate that the applicant has become entitled to enter such college or university, signed by the Registrar thereof. Proof of the satisfactory completion of such college work shall be made either by certificate that the applicant has satisfactorily completed such work, or in lieu of such certificate, the applicant must pass an examination given by or under the direction and supervision of the Board of Law Examiners in a course of studies to be approved by the Board as the equivalent of such seventy-two weeks of college study. The Board by rule may recommend certain subjects, but shall not specifically require any particular group of studies, as the equivalent of such seventy-two weeks of general college work.

2. *Legal Education:* After the completion of both the preliminary and college work above set forth in Paragraph 1 of this Section, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies by one of the following methods, of which proof thereof, respectively, shall be made in the manner following:

A. *Law School Study:* Such course of law studies shall have been pursued by the applicant in one or more established law schools accredited by the Board of Law Examiners, and shall aggregate at least 1,296 class room hours. In computing such number of class room hours, credit shall be allowed for no more than five hundred forty class room hours in any period of one scholastic year; but if during any such week or weeks a major portion of such class room hours shall be after four o'clock in the afternoon, then credit shall be allowed for no more than three hundred fifty-

one class room hours during the period of one year. It shall be required that the applicant shall have passed satisfactory examinations in each of the law studies aggregating said twelve hundred ninety-six class room hours. Proof of such law school study shall be made by certificates from such law school or schools.

*B. Law-office Study:* Such course of law studies, embracing the subjects herein enumerated and such further law studies as shall be prescribed by the Board of Law Examiners as the equivalent of the law school study above provided, shall have been pursued by the applicant, after registering with the Board of Law Examiners at the beginning of such course of law studies, while actually engaged during usual business hours as a law clerk or in a similar capacity in a law office and under the personal tuition of a licensed attorney for attorneys in active practice in the State of Illinois for a period of four years during at least thirty-six weeks in each year, and such applicant shall have satisfactorily passed monthly written or oral examinations in each subject given under the direction of such attorney or attorneys.

*Proof:* Proof of such law studies shall be made by (1) filing with the Board of Law Examiners prior to the beginning of such course of law studies, a registration statement by the applicant specifying the date on which such law studies are to commence, the name and address of such attorney or attorneys under whom he will study and such other relevant facts as the Board may require, and an undertaking by such attorney or attorneys faithfully to give such instruction and such examinations, specifying the books to be used and method of instruction to be employed, the approximate dates on which such examinations are to be held and such other relevant facts as the Board may require; and (2) filing with the Board of Law Examiners at the conclusion of such law office study the affidavit of such attorney or attorneys showing a full compliance with this

provision. If, in consequence of the death or absence from the State of any such attorney, his affidavit cannot be procured, such proof, subject to the approval of the Board of Law Examiners, may be made by affidavit of any credible witness having personal knowledge of the facts. The applicant may be required by the Board of Law Examiners to take an examination under the supervision of the Board once each year during the first three years of such law office study.

*C. Combined Law School and Law-office Study:* In the event an applicant shall have pursued a course of law studies partly in a law school and partly in a law office as above provided, then, to meet the requirements of this rule, the applicant shall have pursued such course of law studies for a period of four years during at least thirty-six weeks in each year. The applicant shall be allowed credit for his law school study upon presentation of a certificate from such law school or schools showing the studies taken therein by personal attendance, the number of classroom hours and weeks of law study pursued, and the passing of satisfactory examinations in such studies and the applicant shall be allowed credit for his law office study when proof thereof is made as above provided.

3. The Board of Law Examiners in their discretion may waive the six-year requirement of paragraph 2 of Section III in the case of any applicant who meets the other requirements of this section and who has been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

#### SECTION IV.—*Qualification on Examination*

1. Any person who meets the educational requirements set forth in Section III of this rule may make application to the Board of Law Examiners for admission to the Illinois Bar on examination.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section I of this rule; together with proof of his educational qualifications. In the event the proof shall be satisfactory to the Board of Law Examiners, the applicant shall be admitted to examination.

3. The Board of Law Examiners shall conduct two examinations annually—in Chicago in September and in Springfield in March, on the first Tuesday in each of said months, unless the Board shall fix a different place and shall give to all applicants not less than thirty days' notice of such change. The examinations shall be conducted under the supervision of the Board by uniform printed interrogatories, and by such additional or supplemental methods as the Board may prescribe. The examinations may be upon the following subjects: The law of real and personal property, persons and domestic relations, torts, contracts, partnerships, bailments, negotiable instruments, agency, suretyship, wills, private and municipal corporations, equity jurisprudence, crimes, conflict of laws, evidence, administrative law, law and equity pleading practice and procedure, the federal and state constitution, and legal ethics.

4. If an applicant fails to pass his first examination, he may be permitted to take successive examinations provided he furnishes the Board with satisfactory evidence of diligent study of the law since his prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the Board of Law Examiners or the Supreme Court. The Board or Court so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study and fix the time when such examination may be taken.

5. The Board shall certify to the court the name of every person who has passed the Bar examination and is ready for admission.



## SECTION V.—*Qualification on Foreign License*

1. Any person who has been admitted to practice in the highest court of law in any other state or territory of the United States or the District of Columbia, or admitted to practice as an attorney and counselor-at-law (or the equivalent) in another country whose jurisprudence is based upon the principles of the English Common Law, may make application to the Board of Law Examiners for admission to the Bar without examination upon any one of the following conditions:

(a) If the requirements for admission in such other jurisdiction at the time of the applicant's admission there were equivalent to the requirements prescribed by this rule;

(b) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule requiring not less than two years of law study, has actively practiced law in such other jurisdiction for at least five years within the period of seven years immediately prior to making application in Illinois;

(c) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule which does not require at least two years of law study, has actively practiced law in such other jurisdiction not less than eight years within the period of ten years immediately prior to making application in Illinois.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section I of this rule, together with proof of such residence, admission to practice, and, if required, of such practice; and such proof shall be supported by a certificate of a judge of the highest

court in such other jurisdiction certifying that the applicant has been so admitted and is of good moral character. Such certificate shall be certified by the Clerk of the Court and sealed with a seal thereof.

3. In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of approved character, the Board shall certify to the Court that such applicant is qualified for admission on a foreign license.

#### SECTION VI.—*Fees of Applicants*

1. Each applicant for admission to the Bar on examination shall pay in advance a fee of twenty dollars, and a similar fee for each subsequent examination.

2. Each applicant for admission to the Bar on a foreign license shall pay in advance a fee of one hundred dollars.

3. Each applicant for examination on preliminary education or on law office study, as provided in this rule, shall pay in advance a fee of ten dollars.

4. All fees shall be paid to the Treasurer of the Board to be held by him subject to the order of the Court.

#### SECTION VII.—*Foreign Attorneys in Isolated Cases*

Anything in this rule to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may, in the discretion of any court of record of this state be permitted to participate before such court in the trial or argument of any particular cause in which, for the time being, he is employed.

### SECTION VIII.—*Qualifications Under Prior Rules*

Applicants who commenced the study of law prior to the effective date of this rule and applicants heretofore examined and entitled to re-examination, may qualify for examination or re-examination under the provisions of the rules of this court in force at the date when they commenced the study of law.

### SECTION IX.—*Committee on Character and Fitness*

1. At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Appellate Court Districts of this State, consisting of not less than three members of the Bar. The members of the Board of Law Examiners appointed for their respective districts shall be ex-officio members of the Committee.

2. Before admission to the Bar, each applicant shall be passed upon by the Committee in his district as to his character and moral fitness. He shall furnish the Committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history and environments, together with the affidavits of at least three reputable persons personally acquainted with him residing in the county in which the applicant resides, each testifying that the applicant is known to the affiant to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based. Each applicant shall appear before the Committee of his district or some member thereof and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar.

3. If the Committee is of the opinion that the applicant is of approved character and moral fitness, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the Bar.

**SECTION K.—Power to Make Rules, Investigations and Subpoena Witnesses**

1. Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have power to make, adopt and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

2. The Board of Law Examiners and the Committee on Character and Fitness for each Appellate Court District are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the Bar relative to examinations given by or under the supervision of the Board of Law Examiners and relating to the character and moral fitness of applicants for admission. They may call to their assistance in such inquiries other members of the Bar and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses as hereinafter provided. The hearings before the Commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the Commissioners, the Clerk of this Court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatem to take depositions. Witnesses shall be sworn by any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the Court, if requested. The Commissioners shall report to this court the failure or refusal of any person to attend and testify in response to any subpoena issued as herein provided.

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CHARLES ELMORE BROPLEY  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

No. 205

IN RE CLYDE WILSON SUMMERS,

*Petitioner.*

**THE RETURN OF THE CHIEF JUSTICE AND THE  
ASSOCIATE JUSTICES OF THE SUPREME COURT  
OF ILLINOIS TO THIS COURT'S RULE TO SHOW  
CAUSE IN THE ABOVE ENTITLED MATTER; AND  
BRIEF IN SUPPORT OF THE RETURN.**

GEORGE F. BARRETT,  
*Attorney General of the State  
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Attorney for Respondents,  
Springfield, Illinois.*

WILLIAM C. WINES,  
*Assistant Attorney General,  
Of Counsel.*



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Now come William J. Fulton, Chief Justice of the Supreme Court of Illinois, and Clyde E. Stone, Francis S. Wilson, Walter T. Gunn, Loren E. Murphy, June C. Smith and Charles H. Thompson, Associate Justices of the Supreme Court of Illinois, and by this their return to this court's order and rule heretofore entered on the 9th day of October, A. D. 1944, and spread of record in the above entitled matter, the said Chief Justice and the said Associate Justices of the Supreme Court of Illinois respectfully show cause why the supposed and alleged record in this proceeding should not be certified in this court and also why the petition for a writ of *certiorari* herein should not be granted.

As and for their said return in this behalf, the said Chief Justice and the said Associate Justices respectfully state as follows:

### I.

Under the Constitution of the State of Illinois as expounded by the Supreme Court of Illinois, all matters pertaining to the right to admission to the bar of Illinois and the right to practice law are subject to regulation by the Supreme Court of Illinois, to the exclusion of any power in the legislature to pass any act or statute in conflict with or in derogation of such jurisdiction of the Supreme Court of Illinois. (*In re Day*, 181 Ill. 73.)

In the exercise of its jurisdiction in the premises, the Supreme Court of Illinois has adopted and promulgated, as Rule 58 of the Rules of Practice and Procedure of the Supreme Court of Illinois, a rule governing the qualifications, manner of application for and mode of admission to the bar of the State of Illinois. The entire text of such rule is set forth in full as Appendix I to the brief filed in support of this return. (*Post*, page 31.) Pertinent excerpts from the said rule are here set forth.

In and by Section I of the said Rule 58, it is provided as follows:

"Persons may be admitted to practice as attorneys and counselors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners or have been licensed to practice law in another state, territory, the District of Columbia or in certain foreign jurisdictions. All subject, however, to the terms and requirements hereinafter contained in this rule."

Sections II, III and IV of the said rule have to do with the appointment of bar examiners, the prescription of gen-

eral academic and formal educational requirements, and qualification upon bar examinations.

Section V of the said rule pertains only to attorneys from other states seeking admission to the bar of Illinois.

Section VI of the said rule pertains only to fees of applicants.

Section VII of the said rule pertains only to the recognition of attorneys from other states in isolated cases.

Section VIII of the said rule pertains only to matters concerning qualifications under prior rules.

Section IX of the said rule is as follows:

"1. At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Appellate Court Districts of this State, consisting of not less than three members of the Bar. The members of the Board of Law Examiners appointed for their respective districts shall be *ex-officio* members of the Committee.

"2. Before admission to the Bar, each applicant shall be passed upon by the Committee in his district as to his character and moral fitness. He shall furnish the Committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history and environments, together with the affidavits of at least three reputable persons personally acquainted with him residing in the county in which the applicant resides, each testifying that the applicant is known to the affiant to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based. Each applicant shall appear before the Committee of his district or some member thereof and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar.

"3. If the Committee is of the opinion that the applicant is of approved character and moral fitness,

it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the Bar."

Section X of the said rule pertains only to the power to make rules, investigations and subpoena witnesses.

The petitioner in the instant case applied to the Committee on Character and Fitness of the Third Appellate District of Illinois for a certificate to the Supreme Court of Illinois that he was of approved character and moral fitness. This certificate was denied the petitioner by that committee. Under the organic law of Illinois as expounded by the Supreme Court of Illinois, admission to the Bar of Illinois constitutes the appointment of the applicant an officer of the court. The petitioner having failed to procure the certificate that he was of approved moral character and fitness required by the Supreme Court of Illinois as a prerequisite to appointment as an officer of the court, petitioner's application for a license to practice law was denied.

The petitioner petitioned the Supreme Court to reconsider its determination in the premises. The Justices of the Supreme Court treated the petition as an informal application for a reconsideration of their determination not to constitute petitioner an officer of the court by granting him a license to practice law. The correspondence and communications of the petitioner with the Justices of the court have not been spread of record in the said court and, under the laws of Illinois as expounded by her Supreme Court and under the practice of that court, do not constitute or comprise the record of any case or controversy pending in the Supreme Court of Illinois.

The Supreme Court of Illinois, in treating the petitioner's application for admission to the bar as a mere application and not as a judicial proceeding, acted in accordance with

its invariable practice and did not apply any rule to petitioner's matter other than or different from the rule that it would apply in any other or similar case.

## II.

The Chief Justice and the Associate Justices respectfully show that the petitioner's application for admission to the bar did not and does not constitute a case or controversy, either within the purview of the law of Illinois or within the purview of the Constitution and laws of the United States of America. Therefore it is respectfully asserted that there is no justiciable case or controversy which can be reviewed by this court in the exercise of its constitutional or statutory appellate jurisdiction, as distinguished from its original jurisdiction.

But if petition to this court for the writ of *certiorari* be deemed not a proceeding in its nature appellate but as an attempt to institute an original proceeding in this court, then it is respectfully asserted that such petition, when so considered and construed, must be deemed to constitute an attempt to institute an original case or controversy against the State of Illinois, in violation of Illinois' sovereign immunity to such cases or controversies at the instance of a citizen.

Therefore it is respectfully submitted that no case or controversy was pending in the Supreme Court of Illinois, wherefore no appellate proceeding can be maintained or conducted in this court, and that no original proceeding can be entertained in this proceeding in the premises without violating the immunity of the State of Illinois.



## III.

Although the respondents submit, for the reasons above set forth, that their acts and determinations in the premises are not subject to review either by appellate proceedings or by original proceedings in this court, and although they submit that they are not bound to answer the petitioner's assertions that the sole basis for denying him a license to practice as an officer of the court was that he claimed to be a conscientious objector to military service, nevertheless the Chief Justice and the Associate Justices of the Supreme Court of Illinois say that, if it be supposed that the action of the court in the premises is subject to review in this proceeding and if it be further supposed that the sole ground for refusing the petitioner admission to practice as an officer of the court was his profession of conscientious objection to military service, nevertheless such refusal could not be deemed arbitrary or unreasonable because all applicants for admission to the Illinois bar are required to take an oath to support the Constitutions of the United States of America and of the State of Illinois; and the petitioner could not take such an oath in good faith because the Constitution of the State of Illinois is expressly so drawn as to require military service of all able-bodied male persons resident in the state between the ages of eighteen and forty-five unless exempted by the laws of the United States or of the State of Illinois, the Constitution of Illinois further providing in substance that in time of war, conscientious objection to military service shall not exempt the citizen from such service.

Sections 1 and 6 of Article XII of the Constitution of the State of Illinois are, respectively, as follows:

"The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state." (*Constitution of Illinois*, Art. XII, Sec. 1.)

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption." (*Constitution of Illinois*, Art. XII, Sec. 6.)

It does not appear that petitioner, in his application for admission to the bar of Illinois, made any showing that he would serve the United States or the State of Illinois in time of war, notwithstanding his conscientious objections, if the federal government should fail to continue its policy of exempting conscientious objectors or if Illinois should require his services in her militia without regard to his religious affirmations.

It is further shown to this Court that even though Congress may see fit to grant a temporary exemption from military service to conscientious objectors, such exemption can be withdrawn at any time; moreover, it appears that the militia may be called in time of war according to the laws of the State of Illinois, there being no exemption from state military service upon the ground of conscientious objection in time of war; wherefore, the Supreme Court of Illinois did not act arbitrarily, but acted in accordance with the laws and Constitution of the State of Illinois when it refused to grant a license to the petitioner to practice law.

Wherefore, the Chief Justice and the Associate Justices of the Supreme Court of Illinois respectfully pray that the rule heretofore entered in this behalf may be discharged and that the petitioner's petition may be dismissed.

Respectfully submitted,

WILLIAM J. FULTON,

*Chief Justice of the Supreme Court  
of Illinois,*

CLYDE E. STONE,

FRANCIS S. WILSON,

WALTER T. GUNN,

LOREN E. MURPHY,

JUNE C. SMITH,

CHARLES H. THOMPSON,

*Associate Justices of the Supreme  
Court of Illinois,*

By GEORGE F. BARRETT,

*Attorney General of the State  
of Illinois,*

*Attorney for the Respondents.*

WILLIAM C. WINES,

*Assistant Attorney General,  
Of Counsel.*

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

William C. Wines, being first duly sworn upon his oath, deposes and says that he is an Assistant Attorney General of the State of Illinois, that the Justices of the Supreme Court of Illinois have requested the Attorney General of the State of Illinois to prepare and present the foregoing return and the brief in support thereof, that this affiant has read the foregoing return, that he knows the contents thereof, that the same are true and that he makes this affidavit by the authority of the Attorney General of the State of Illinois.

Subscribed and sworn to before me this 6th day of November, A. D. 1944.

*Notary Public.*





**BRIEF IN SUPPORT OF THE FOREGOING RETURN.**

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## SUMMARY OF ARGUMENT.

I. The justices submit that this court can not review the instant matter by the issuance of a writ of *certiorari* because:

*First:* This court's *appellate* jurisdiction can not be sustained because the matters pending in the Supreme Court of Illinois did not constitute a "case or controversy" within the purview of the constitutional provisions creating this court and measuring its jurisdiction.

*Second:* This court's *original* jurisdiction can not be invoked to sustain this petition because to entertain the instant petition as adversary litigation original in this court would violate Illinois' immunity to suit.

*Third:* The right to admission to the bar is neither a privilege nor an immunity nor liberty nor property within the purview of the fourteenth amendment.

II. Although the justices respectfully deny the existence of this court's jurisdiction in this matter, nevertheless, if such jurisdiction can be supposed to exist, they submit:

*First:* This court has held, even without express declaration of Congress, that a foreign-born citizen can not obtain American citizenship without taking an unreserved and unconditional oath to render military service in time of war. (*United States v. Schwimmer*, 279 U. S. 644; *United States v. Macintosh*, 283 U. S. 644.) Since petitioner, if he were not native born, could not even obtain American citizenship, *a fortiori*, the Supreme Court of Illinois did not act arbitrarily and unreasonably in holding that one who, according to this court's decisions, has not the requisite character for American citizenship, likewise lacks the requisite character for admission to the bar of Illinois.

*Second:* The Constitution of Illinois declares all able-bodied male persons between the ages of eigh

teen and forty-five, to be members of the militia and clearly provides that there shall be no constitutional right to oppose religious scruples, even if sincere, to State militia service in time of war unless Congress or the State of Illinois shall so declare. The constitutional privilege is conditional upon existing and continued legislative indulgence. Petitioner does not show that his religious scruples are thus conditional and that they would yield to withdrawal of the privilege, which withdrawal is explicitly contemplated by Article XII of the Constitution of Illinois.

Applicants for admission to the bar of Illinois are required to take an oath to support the Constitution of the State of Illinois. The Supreme Court of Illinois did not act arbitrarily or unreasonably when it denied a license to a man who could not conscientiously respect both his religious convictions and his oath to support the Constitution of Illinois.

*Third:* Notwithstanding petitioner's argument to the contrary, Congress has not expressly declared the slightest solicitude for the religious convictions of those who otherwise would be subject to compulsory military duty. On the contrary, the exclusion of the conscientious objectors from military service, like the exclusion of clergymen, ex-convicts, those engaged in essential civilian activities, those with extraordinary family responsibilities, those ridden with disease, illiterates and feeble-minded persons, is dictated, not by regard for the individual, but by considerations of military expediency. It does not appear that petitioner is exempted because of regard for his creed. Rather he is exempted because in the sense of the Congress that he would not make a fit soldier. Therefore petitioner has no basis for his claim of congressional recognition of his private religious beliefs.

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## STATEMENT OF THE CASE.

The facts which would be disclosed by the certification of the correspondence between petitioner and the Justices of the Supreme Court of Illinois, if such correspondence could be deemed the record of a judicial proceeding and subject to certification to this court as such record, have been fully set forth in the foregoing return to this court's rule to show cause. For the purpose of posing the only questions that can be deemed to be raised by the instant petition, those facts may be summarized as follows:

Petitioner, having passed the Illinois State bar examination conducted under order of the Supreme Court of Illinois, applied for the certificate of good moral character required by the rules of the Illinois Supreme Court for admission to the bar. He was refused such certificate, it being assumed for the purposes of this petition that the sole basis for such refusal was the fact that he had asserted conscientious objection to compulsory military service.

Article XII of the Constitution of Illinois declares "all able-bodied male persons between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state," to be members of the "militia of the State of Illinois." That article further provides that "no person having conscientious scruples against bearing arms shall be compelled to do militia duty **in time of peace.**" An oath to support the Constitution of the State of Illinois is a prerequisite to admission to the Bar of Illinois.

Petitioner requested the Supreme Court of Illinois to admit him to the Illinois Bar notwithstanding his failure

to obtain the required certificate of good moral character. This the Illinois Supreme Court refused to do.

The Illinois Supreme Court has not, either in the case of petitioner, or in the case of any other applicant for admission to the bar, treated applications for admission to the bar as a "case or controversy" pending in the Supreme Court of Illinois. By informal action of the justices, petitioner has been denied a license to practice law in Illinois.

## THE QUESTIONS PRESENTED.

### I.

The first question presented is whether this court has jurisdiction to review this matter upon the issuance of this court's writ of *certiorari*. This question involves the following two subsidiary inquiries:

*First:* Can this court's jurisdiction in the instant matter be sustained as *appellate* jurisdiction, which implies inquiry as to whether the matters occurring in the Illinois Supreme Court constitute a "case or controversy" determined in that court and subject to *appellate* review?

*Second:* If appellate jurisdiction cannot be predicated upon the proceedings in the Illinois Supreme Court, then can this court's *original* jurisdiction be invoked without violation of Illinois' sovereign immunity to suit by citizens?

### II.

Although the Justices submit that neither appellate nor original jurisdiction of this court can be sustained in this matter, nevertheless if it be assumed that such jurisdiction can be sustained, the further question arises whether the petitioner has presented a substantial federal question.

The only federal question that he seeks to present is *not* the question whether, in this court's discretion, he should be admitted to the bar of Illinois, but whether this court can declare that the Illinois court acted unreasonably and arbitrarily in denying him admission to the bar when such admission entails the requisite of the taking of an oath to support the Constitution of Illinois, and the Illinois Constitution in substance provides that there is no constitutional right to oppose conscientious scruples to military service in time of war.

## ARGUMENT.

### I.

**The action of the Supreme Court of Illinois is not subject to review in this proceeding.**

Although where this court's jurisdiction exists at all, it is necessarily supreme, nevertheless that jurisdiction, since it derives ultimately from the Constitution of the United States, depends upon the presence of a "case or controversy," within the purview of the provisions of the Constitution of the United States which either directly create or authorize creation by Congress of federal courts, and which either directly confer or authorize the congressional bestowal of jurisdiction upon such courts. (*The Constitution of the United States*, Article III.)

In *Actna Life Insurance Company v. Haworth*, 300 U. S. 227, this court held that the existence of a "controversy" or "case" was an indispensable prerequisite to the existence of federal jurisdiction. That holding of course is merely declaratory of Article III of the Constitution itself.

This court's appellate jurisdiction cannot be sustained because petitioner's application to the Supreme Court of Illinois did not constitute a "case or controversy" in that court.

This court's jurisdiction must necessarily be either appellate or original. A prerequisite to the existence of either appellate or original jurisdiction is the existence of a "case or controversy". Appellate jurisdiction can be predicated only upon the existence of a "case or controversy" in a court of subordinate jurisdiction. Therefore, if appellate jurisdiction is to be sustained in the instant case, there must have existed a "case or controversy" in

the Supreme Court of Illinois which is subject to review under this court's statutory powers.

The petitioner's application to the Supreme Court of Illinois for admission to the bar of Illinois cannot possibly be deemed to have presented a "case or controversy" in that court. If it constituted a case, who were the parties to that case? Against whom was a demand asserted or relief sought? The granting of a license to practice law is in no sense the recovery of a judgment, nor is such granting of such license in the nature of a sentence or decree. It is at the most the granting of a privilege. In short, petitioner's matter did not constitute litigation.

In *Bradwell v. Illinois*, 83 U. S. 130, as counsel for petitioner admits, this court held that the right to practice law was not a privilege or immunity within the purview of the Fourteenth Amendment. Counsel for the petitioner states at page 4 of their petition,

"We have found no case involving admission to the practice of law decided by this court since 1873."

They have evidently overlooked the case of *In re Lockwood*, 154 U. S. 116, decided in 1894, where this court adhered to the decision in the *Bradwell* case and upheld a decision by the Supreme Court of Virginia denying admission to the bar of that state a woman whom was a member of the bar of this court. Although this court had long admitted women to its bar, it sanctioned refusal to admit them to the state bar, even though such refusal was based upon the ground of sex alone.

It is to be noted and emphasized that the ground of the decisions in the *Bradwell* and *Lockwood* cases was *not* that the action of the state courts was reasonable, but was a ground pertinent under the present point; namely, that application for admission to the bar asserted no justiciable claim of a federal constitutional right.



In the *Bradwell* case, the court in effect denied jurisdiction on the ground that no federal question was presented. It was therefore unnecessary for this court to pass upon the further question whether an application for admission to the bar is a case or controversy which is subject to appellate review.

It is the submission of the Justices of the Supreme Court of Illinois that the action of that court in the instant matter was not a determination of a "case or controversy" and is therefore not subject to review by this court in the exercise of appellate, as distinguished from original, jurisdiction.

The instant petition cannot be entertained as an invocation of this court's original jurisdiction without violating Illinois immunity.

But if the instant proceeding is conceived not as the statutory writ of *certiorari* which is in effect a purely appellate proceeding but is viewed as an original proceeding, then jurisdiction must be disavowed because, in order to present a "case or controversy" for original justification, there must be an adversary. The only adversary that can be perceived in the instant case is the State of Illinois. Of course, the State of Illinois is immune to original suit by a citizen. It is not every claim of violation of the Constitution of the United States, even though the claim may be substantial, that may be exerted in an original proceeding in the federal courts. This court has consistently held that where a claim of constitutional right, even though the claim be well founded, can be determined only by a proceeding which is in effect one against the State, jurisdiction fails if the suitor is not the United States or a State but a citizen.

In *Governor of Georgia v. Madrazo*, 26 U. S. 110, and *New York Guaranty Co. v. Steele*, 134 U. S. 230, this court

\* It is not conceded that the claim is substantial in the instant case.

held that original proceedings, though in form merely against state officials, could not be entertained if in fact the effect of the decision would be to bind the State. To the same effect is *Cunningham v. Macon & Brunswick Railroad Company*, 109 U. S. 446.

It is therefore submitted that jurisdiction of this matter, if it exists at all, must necessarily be either appellate or original. Appellate jurisdiction does not exist because the proceedings before the Supreme Court of Illinois, although they involved the discharging of an important function of the judges, did not embody or constitute a "case or controversy" and are therefore not subject to appellate review. Similarly, this proceeding cannot be sustained as an independent and original proceeding, for its only intent and purpose is to bind the State of Illinois by requiring her courts and other governmental officials to recognize petitioner as a member of her bar. Thus, the proceeding, when viewed as an original one, is really directed at Illinois' sovereignty.

Therefore it is the submission of the Justices of the Supreme Court of Illinois that neither appellate nor original jurisdiction obtains in this matter.

This petition can not be entertained as an invocation of either appellate or original jurisdiction because the right of admission to the bar of a state is not a right within the purview of the federal constitution.

In the *Bradwell* and *Lockwood* cases, both cited above, 83 U. S. 130 and 154 U. S. 116, this court held that the right to practice law was not a privilege or immunity within the purview of the Fourteenth Amendment. It is not perceived how the right to be an officer of a court can be claimed as either "liberty" or "property" if it is neither a privilege nor an immunity.

## II.

**Even if this court had jurisdiction to review the present matter upon the merits, it should deny certiorari because no substantial federal question is involved.**

Under the preceding Point, it has been submitted that the action of the Supreme Court of Illinois was not of a character which renders it susceptible to review either by appellate or original proceedings and that therefore this court has no jurisdiction to entertain the present application for *certiorari*. Under the present Point, however, we assume, merely for the sake of argument, that this court has jurisdiction to consider the petitioner's request that it supersede the determination of the Supreme Court of Illinois in the instant matter.

Even under this assumption, it is clear that no substantial federal question is presented.

Before taking cognizance of the provisions of the Illinois Constitution which make it plain that obedience to that constitution is inconsistent with even sincerely conscientious objection to military service, we refer to two cases which are, we submit, decisive of the question which we are now supposing to be within this court's jurisdiction. The first of these cases is *United States v. Schwimmer*, 279 U. S. 644. The second is *United States v. Macintosh*, 283 U. S. 605. In both of these cases, it was held that an applicant for citizenship, a privilege certainly as precious as a license to practice law, was properly denied naturalization because he (or in the first case, she) would not state that he or she would serve this country in time of war regardless of personal scruples against such service. This conclusion was reached in the absence of requirement in express terms that the applicant be free of such conscientious objec-

tions. It was decided as a logical implication of the requirements of citizenship and of the requirement of good moral character in the civic sense.

It is true that there were dissenting opinions in both cases. It is likewise true that those dissents were written by illustrious jurists, the first dissent being written by Mr. Justice Holmes and the second by Chief Justice Hughes. But even if the dissenting opinions had prevailed, those cases would not sustain the petitioner in the instant case for the following very cogent reasons: In the *first* place, the dissenting opinions are quite as illuminating as the majority opinions; for in neither case do the dissenting jurists suggest that a requirement that an applicant for civil privilege subordinate personal scruple to constitutionally enacted military policy would be unconstitutional if such a requirement had been expressed and not left to inference by construction. On the extreme contrary, Mr. Justice Hughes, in dissenting in the *Macintosh* case, expressly said that the question was not "one of the authority of Congress to exact a promise to bear arms as a condition of its grant of naturalization." He further said: "That authority, for the present purpose, may also be assumed."

No more did Mr. Justice Holmes even intimate, much less declare, that he would strike down as unconstitutional a provision enacted by Congress requiring absolute obedience, regardless of conscientious objection, to military policy as a prerequisite to citizenship. Moreover in the *Schwimmer* case, Mr. Justice Holmes predicated his decision very largely upon the fact, specific in that case and absent here, that the applicant for citizenship was an aged woman who could not under any conceivable circumstances be regarded as actually available for military service in any event.

The majority opinions in the two cases last cited held that a requirement of absolute, rather than conditional, obedience to military policy could be *implied, even in the absence of explicit declaration of congressional policy*, as a prerequisite to citizenship. But in the instant case, this court is not asked, as it was asked in the two cases cited above, to decide for itself whether requirements of "good moral character" and the oath to support the Constitution of Illinois do or do not fairly imply, in the absence of express declaration, an absolute promise of military service. This court is asked only to review determination of the Justices of the Supreme Court of Illinois that, under Illinois' Constitution, the obligation of military service in time of war is absolute and cannot be conditioned upon the scruple of the citizen.

Still another circumstance distinguishes the cited cases from the case at bar. We have said that the right of citizenship is as precious as a license to practice law. In fact, it is of course far more precious, since it is only one of the prerequisites to admission to the bar. **Under the decisions of this court, petitioner, if he were foreign born, could not be admitted to the bar of Illinois because he could not even become a citizen of the United States.** This court's own decisions are authority for the proposition that reservations against compulsory military service, even without an enactment by Congress, are, as a matter of law, an impediment to citizenship. Upon what theory, then, can it be even suggested, much less held, that the Supreme Court of Illinois has acted arbitrarily in ruling that one who, under decisions of this court, lacks the moral requisites of citizenship also lacks the requisites for admission to the bar of Illinois? Why, in other words, should the mere fact that petitioner is a native born citizen entitle him to a privilege which would be denied, along with every



other privilege of citizenship, if, like Macintosh, he had been born in Canada?

Finally, however, we come to a consideration which we submit is absolutely conclusive in its force against the petitioner's contentions here. Applicants for admission to the bar are required to take an oath to support the Constitutions of the United States and of the State of Illinois. Two provisions of the Constitution of the State of Illinois which are pertinent here are as follows:

"The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state." (*Constitution of Illinois*, Art. XII, Sec. 1.)

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in **time of peace**: *Provided*, such person shall pay an equivalent for such exemption." (*Constitution of Illinois*, Art. XII, Sec. 6.)\*

It is quite obvious that the petitioner could not conscientiously abide both by his convictions and his oath to support the constitution of Illinois if the State of Illinois should require his service in time of war.

In Illinois, every able-bodied male citizen between the ages of eighteen and forty-five, except such persons as may be exempted, is a member of the Illinois militia. Petitioner has made no showing that he merely intends to claim the exemption as a conscientious objector *if such exemption is*

\* The argument that Congress presently recognizes petitioner's religious scruples is answered *post*, where it is shown (1) that a fairer reading of Illinois' Constitution recognizes petitioner's rights to exemption on religious grounds as a right conditional upon the will of Congress and the legislature; whereas petitioner does not show that his refusal to serve is thus conditional, (2) the present exemption of conscientious objectors is grounded upon considerations of military policy rather than solicitude for religious beliefs, and (3) Illinois indulge no such exemption as to petitioner in time of war.

*allowed by law*, and that, if not allowed by law, he will yield obedience to the United States or to the State of Illinois.

Since this court cannot infer anything in favor of the petitioner that he has not affirmatively made to appear, it must be presumed that the petitioner, out of scruple and conviction, would feel compelled to assert that his religious principles are paramount to the command of the Constitution of the State of Illinois and to the power of the government of the United States. This the present act of Congress permits him to do so far as federal military service is concerned:

But the present act of Congress does not require petitioner to take an oath to support the provisions of the Constitution of the State of Illinois, which negatives exemption on the ground of conscientious objection from state military service. Application for admission to the bar does, however, entail such requirement.

Moreover, the present act of Congress, even so far as it applies to federal military service, represents no more than a temporary provision which exempts petitioner from federal military service so long as it is not repealed. Petitioner has made no showing that his refusal to serve in the armed forces is conditional upon continued recognition of his religious persuasions as a ground of exemption. It is a fair inference, not rebutted by petitioner, who would have the burden of proof upon the issue since he alone knows the content of his creed, that if he is really convinced that God has commanded him not to serve in the army, he would not disobey his conception of God's command out of regard for what, to him, would logically appeal to be only man-made law.

Furthermore, it does not appear that Congress, in declaring that one young man might, by the assertion of even sincere religious convictions, require another young

man, who did not hold such convictions; to be slain in his place, was actuated by the slightest sentiment or compunction for the personal liberty of the conscientious objector. That provision may as well be sustained as a declaration of a coldly calculated military policy which views those who believe themselves to have commands from God inconsistent with commands from their country to be undesirable soldiers. Exemption from military services is not ordinarily regarded as, on the one hand, a special privilege of the individual, or, upon the other hand, as a punishment of the individual. It is true that both clergymen, who are usually highly venerated, and confirmed felons, who are usually utterly despised and ~~executed~~ <sup>execrated</sup> are exempted from military service. So are the physically unfit, those over age, illiterates and feebleminded persons, as well as those engaged in essential civilian activities and those whose conscription would work a severe hardship. In none of these cases can it be said, however, that exclusion from the armed forces is either indulged as a personal exemption from military burdens or is inflicted as a deprivation of the benefits of military honor. It is military policy, not the rights of the individual, that dictates exclusion from military service. Therefore, petitioner's contention that Congress has respected his religious rights has no clear basis in any utterance of federal legislation.

The possibility that petitioner might be called upon to obey Article XII of the Constitution of the State of Illinois, even though he was not a member of the armed forces of the United States, is not fanciful. This court will take judicial notice that the City of Chicago, like other large cities in the United States, has actively exploited unmobilized personnel in such military activities as watching for the approach of enemy planes with a view to the destruction of such planes by warfare. Although happily

these precautions, at least so far as Chicago is concerned, have been found unnecessary, nevertheless they emphasize that in time of war military service by unmobilized civilians may become necessary.

Even if this court has jurisdiction of this matter (and we deny the existence of such jurisdiction), it is not asked to decide whether petitioner should be admitted to the bar of Illinois. It is asked to decide whether the Supreme Court of Illinois acted arbitrarily in holding that one who cannot take an unqualified, unreserved and categorical oath to obey specific provisions of the Illinois Constitution and who, if he were not a citizen by birth, could not even take the oath of allegiance prerequisite to naturalization may not, in time of war, receive a license to practice law. We submit that this question admits of only one answer, which answer is adverse to petitioner.

### Conclusion.

For the foregoing reasons, it is respectfully submitted by the Justices of the Supreme Court of Illinois that they have made due and proper return to the rule of this court, that the same should be deemed satisfied and discharged, and that the petition should be dismissed.

Respectfully submitted,

GEORGE F. BARRETT,

*Attorney General of the State of  
Illinois.*

*Attorney for Respondents.*

WILLIAM C. WINES,

*Assistant Attorney General,*

*Of Counsel.*

## APPENDIX I.

### RULES OF PRACTICE AND PROCEDURE OF THE SUPREME COURT OF ILLINOIS.

#### RULE 58.

#### ADMISSION TO THE BAR.

The following order was entered by the Court on January 21, 1942:

#### ORDER.

IT IS ORDERED that for the duration of the war and until the further order of the Court, the Board of Law Examiners is authorized to administer Rule 58 governing admission to the bar as follows:

(1) The final semester of law school study may be waived in the case of applicants for the bar examination who are about to enter the armed forces of the United States and will for that reason be unable to complete their law studies in accordance with the present requirements of the rule.

(2) Applicants failing to pass a satisfactory examination in September or December, 1941, or thereafter while the United States is at war, who enter the armed forces of the United States before the examination next following such failure, shall be re-examined only in the subjects on which they failed to pass a satisfactory examination. The first re-examination shall be without additional fee.

(3) Law students about to enter the armed forces of the United States who have satisfactorily completed two-thirds of the work required for graduation from law school, as evidenced by certificate of a law school or schools, may be permitted to enter the bar examination to be examined, however, only on the subjects enumerated in Rule 58 which they have completed. If they enter the armed forces before they have completed their law study in accordance with Rule 58, they shall be re-examined for admission to the bar after



completion of the required law study only in the subjects on which they failed to pass a satisfactory examination and the subjects in which they were not previously examined. The filing fee in such cases shall be \$20.00 and no fee shall be required for the first re-examination.

(4) In addition to the two examinations prescribed by Rule 58, the Board of Law Examiners may in its discretion conduct other examinations and all such examinations may be held at such times and at such places as the Board of Law Examiners shall deem proper. (Order of January 24, 1942.)

### SECTION I.—*General Qualifications.*

Persons may be admitted to practice as attorneys and counselors-at-law in this State if they are citizens of the United States, at least twenty-one years of age, of good moral character and have satisfactorily passed an examination before the Board of Law Examiners or have been licensed to practice law in another state, territory, the District of Columbia or in certain foreign jurisdictions. All subject, however, to the terms and requirements hereinafter contained in this rule.

### SECTION II.—*Board of Law Examiners.*

1. The present members of the Board of Law Examiners shall be continued in office until the expiration of the terms for which they were appointed. The Board shall thereafter consist of five members of the Bar, appointed by the Supreme Court, and each shall serve a term of three years and until his successor is duly appointed and qualified. Two members of the Board shall be appointed from the First Appellate Court District and one member from each of the Second, Third and Fourth Appellate Court Districts. Each member of the Board, upon his appointment, shall make and file with the Clerk of the Supreme Court his oath faithfully to discharge the duties of his office.

2. A majority of the Board shall constitute a quorum. A President, Secretary and Treasurer shall be annually elected. One member may hold the office of both Secretary and Treasurer.

3. The members of the Board and the officers thereof shall receive such salaries as the Court may provide and such further sum for necessary disbursements as may be approved by the Court, all payable out of moneys received from applicants for admission to the Bar as fees for examination and admission.

4. The Board shall audit annually the accounts of its Treasurer and shall report to the Court at each November term a detailed statement of its finances, together with such recommendations as shall seem advisable. All fees paid into the Board in excess of its expenses shall be applied as the Court may from time to time direct.

### SECTION III.—*Educational Requirements.*

Every applicant seeking admission to the Bar of Illinois on examination shall meet the following educational requirements and shall make proof thereof in the manner following:

1. Preliminary and college work: Each applicant shall have graduated from a four year high school or other preparatory school whose graduates are admitted on diploma to the freshman class of any college or university having admission requirements equivalent to those of the University of Illinois; and after such high school or preparatory school graduation shall have satisfactorily completed at least seventy-two weeks of general college work while in actual attendance at one or more colleges or universities accredited by the Board of Law Examiners, or shall have completed such work as is recognized by the Board as the equivalent of such general college work.

*Proof:* Proof of such preliminary education shall be made either by diploma showing such graduation or by certificate that the applicant has become entitled to enter such college or university, signed by the Registrar thereof. Proof of the satisfactory completion of such college work shall be made either by certificate that the applicant has satisfactorily completed such work, or in lieu of such certificate, the applicant must pass an examination given by or under the direction and supervision of the Board of Law Exami-

iners a course of studies to be approved by the Board as the equivalent of such seventy-two weeks of college study. The Board by rule may recommend certain subjects, but shall not specifically require any particular group of studies, as the equivalent of such seventy-two weeks of general college work.

2. *Legal Education:* After the completion of both the preliminary and college work above set forth in Paragraph 1 of this Section, each applicant within the period of six years immediately prior to making application shall have pursued a course of law studies by one of the following methods, of which proof thereof, respectively, shall be made in the manner following:

A. *Law School Study:* Such course of law studies shall have been pursued by the applicant in one or more established law schools accredited by the Board of Law Examiners; and shall aggregate at least 1,296 class room hours. In computing such number of class room hours, credit shall be allowed for no more than five hundred forty class room hours in any period of one scholastic year; but if during any such week or weeks a major portion of such class room hours shall be after four o'clock in the afternoon, then credit shall be allowed for no more than three hundred fifty-one class room hours during the period of one year. It shall be required that the applicant shall have passed satisfactory examinations in each of the law studies aggregating said twelve hundred ninety-six class room hours. Proof of such law school study shall be made by certificates from such law school or schools.

B. *Law-office Study:* Such course of law studies, embracing the subjects herein enumerated and such further law studies as shall be prescribed by the Board of Law Examiners as the equivalent of the law school study above provided, shall have been pursued by the applicant, after registering with the Board of Law Examiners at the beginning of such course of law studies, while actually engaged during usual business hours as a law clerk or in a similar capacity in a law office and under the personal tuition of a licensed attorney or attorneys in active practice in the State of Illinois for a period of four years during at least thirty-six

weeks in each year, and such applicant shall have satisfactorily passed monthly written or oral examinations in each subject given under the direction of such attorney or attorneys.

*Proof:* Proof of such law studies shall be made by (1) filing with the Board of Law Examiners prior to the beginning of such course of law studies, a registration statement by the applicant specifying the date on which such law studies are to commence, the name and address of such attorney or attorneys under whom he will study and such other relevant facts as the Board may require, and an undertaking by such attorney or attorneys faithfully to give such instruction and such examinations, specifying the books to be used and method of instruction to be employed, the approximate dates on which such examinations are to be held and such other relevant facts as the Board may require; and (2) filing with the Board of Law Examiners at the conclusion of such law office study the affidavit of such attorney or attorneys showing a full compliance with this provision. If, in consequence of the death or absence from the State of any such attorney, his affidavit cannot be procured, such proof, subject to the approval of the Board of Law Examiners, may be made by affidavit of any credible witness having personal knowledge of the facts. The applicant may be required by the Board of Law Examiners to take an examination under the supervision of the Board once each year during the first three years of such law office study.

*C. Combined Law School and Law-office Study:* In the event an applicant shall have pursued a course of law studies partly in a law school and partly in a law office as above provided, then, to meet the requirements of this rule, the applicant shall have pursued such course of law studies for a period of four years during at least thirty-six weeks in each year. The applicant shall be allowed credit for his law school study upon presentation of a certificate from such law school or schools showing the studies taken therein by personal attendance, the number of classroom hours and weeks of law study pursued, and the passing of satisfactory examinations in such studies and the applicant shall

be allowed credit for his law office study when proof thereof is made as above provided.

3. The Board of Law Examiners in their discretion may waive the six-year requirement of paragraph 2 of Section III in the case of any applicant who meets the other requirements of this section and who has been admitted to practice in a foreign jurisdiction, but who has not practiced there for the required period of time to gain admission in Illinois on a foreign license.

#### SECTION IV.—*Qualification on Examination.*

1. Any person who meets the educational requirements set forth in Section III of this rule may make application to the Board of Law Examiners for admission to the Illinois Bar on examination.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section I of this rule, together with proof of his educational qualifications. In the event the proof shall be satisfactory to the Board of Law Examiners, the applicant shall be admitted to examination.

3. The Board of Law Examiners shall conduct two examinations annually—in Chicago in September and in Springfield in March, on the first Tuesday in each of said months, unless the Board shall fix a different place and shall give to all applicants not less than thirty days' notice of such change. The examinations shall be conducted under the supervision of the Board by uniform printed interrogatories, and by such additional or supplemental methods as the Board may prescribe. The examinations may be upon the following subjects: The law of real and personal property, persons and domestic relations, torts, contracts, partnerships, bailments, negotiable instruments, agency, suretyship, wills, private and municipal corporations, equity jurisprudence, crimes, conflict of laws, evidence, administrative law, law and equity pleading practice and procedure, the federal and state constitution, and legal ethics.



4. If an applicant fails to pass his first examination, he may be permitted to take successive examinations provided he furnishes the Board with satisfactory evidence of diligent study of the law since his prior examination. An applicant who has been rejected at a fifth examination shall not again be admitted to an examination except upon the permission of the Board of Law Examiners or the Supreme Court. The Board or Court so granting the permission may, as a condition to the granting of another examination, prescribe a further course of study and fix the time when such examination may be taken.

5. The Board shall certify to the court the name of every person who has passed the Bar examination and is ready for admission.

#### SECTION V.—*Qualification on Foreign License.*

1. Any person who has been admitted to practice in the highest court of law in any other state or territory of the United States or the District of Columbia, or admitted to practice as an attorney and counselor-at-law (or the equivalent) in another country whose jurisprudence is based upon the principles of the English Common Law, may make application to the Board of Law Examiners for admission to the Bar without examination upon any one of the following conditions:

(a) If the requirements for admission in such other jurisdiction at the time of the applicant's admission there were equivalent to the requirements prescribed by this rule:

(b) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule requiring not less than two years of law study, has actively practiced law in such other jurisdiction for at least five years within the period of seven years immediately prior to making application in Illinois;

(c) If the applicant while an actual resident in such other jurisdiction and having been admitted there under a rule which does not require at least two years

of law study, has actively practiced law in such other jurisdiction not less than eight years within the period of ten years immediately prior to making application in Illinois.

2. Applications shall be in such form as the Board shall prescribe and shall be accompanied with proof that the applicant meets the requirements of Section I of this rule, together with proof of such residence, admission to practice, and, if required, of such practice; and such proof shall be supported by a certificate of a judge of the highest court in such other jurisdiction certifying that the applicant has been so admitted and is of good moral character. Such certificate shall be certified by the Clerk of the Court and sealed with a seal thereof.

3. In the event the Board of Law Examiners shall find that such applicant meets the requirements of this rule and has received from the Committee on Character and Fitness its certification of approved character, the Board shall certify to the Court that such applicant is qualified for admission on a foreign license.

#### SECTION VI.—*Fees of Applicants.*

1. Each applicant for admission to the Bar on examination shall pay in advance a fee of twenty dollars, and a similar fee for each subsequent examination.

2. Each applicant for admission to the Bar on a foreign license shall pay in advance a fee of one hundred dollars.

3. Each applicant for examination on preliminary education or on law office study, as provided in this rule, shall pay in advance a fee of ten dollars.

4. All fees shall be paid to the Treasurer of the Board to be held by him subject to the order of the Court.

#### SECTION VII.—*Foreign Attorneys in Isolated Cases.*

Anything in this rule to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may, in the

discretion of any court of record of this state be permitted to participate before such court in the trial or argument of any particular cause in which, for the time being, he is employed.

#### SECTION VIII.—*Qualifications Under Prior Rules.*

Applicants who commenced the study of law prior to the effective date of this rule and applicants heretofore examined and entitled to re-examination, may qualify for examination or re-examination under the provisions of the rules of this court in force at the date when they commenced the study of law.

#### SECTION IX.—*Committee on Character and Fitness.*

1. At the November term in each year, the Supreme Court shall appoint a Committee on Character and Fitness in each of the Appellate Court Districts of this State, consisting of not less than three members of the Bar. The members of the Board of Law Examiners appointed for their respective districts shall be ex-officio members of the Committee.

2. Before admission to the Bar, each applicant shall be passed upon by the Committee in his district as to his character and moral fitness. He shall furnish the Committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history and environments, together with the affidavits of at least three reputable persons personally acquainted with him residing in the county in which the applicant resides, each testifying that the applicant is known to the affiant to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based. Each applicant shall appear before the Committee of his district or some member thereof and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar.

3. If the Committee is of the opinion that the applicant is of approved character and moral fitness, it shall so cer-

tify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the Bar.

**SECTION X.—Power to Make Rules, Investigations and Subpoena Witnesses.**

1. Subject to the approval of the Supreme Court, the Board of Law Examiners and the Committee on Character and Fitness shall have power to make, adopt, and alter rules not inconsistent with this rule, for the proper performance of their respective functions.

2. The Board of Law Examiners and the Committee on Character and Fitness for each Appellate Court District are hereby respectively constituted bodies of commissioners of this court, who are hereby empowered and charged to receive and entertain complaints, to make inquiries and investigations, and to take proof from time to time as may be necessary, concerning applications for admission to the Bar relative to examinations given by or under the supervision of the Board of Law Examiners and relating to the character and moral fitness of applicants for admission. They may call to their assistance in such inquiries other members of the Bar and make all necessary rules and regulations concerning the conduct of such inquiries and investigations, and take the testimony of witnesses as hereinafter provided. The hearings before the Commissioners shall be private unless any applicant concerned shall request that they be public. Upon application by the Commissioners, the Clerk of this Court shall issue writs of subpoena ad testificandum, writs of subpoena duces tecum or dedimus potestatem to take depositions. Witnesses shall be sworn by any person authorized by law to administer oaths. All testimony shall be taken under oath, transcribed, and transmitted to the Court, if requested. The Commissioners shall report to this court the failure or refusal of any person to attend and testify in response to any subpoena issued as herein provided.

APR 20 1945

CHARLES ELMORE, CROPLIN  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1944.

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No. 205

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In Re: CLYDE WILSON SUMMERS,

*Petitioner.*

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF  
THE STATE OF ILLINOIS.

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**BRIEF OF RESPONDENTS.**

---

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**STATEMENT OF THE CASE.**

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The Supreme Court of Illinois, sustaining a determination embodied in the recommendation of its Committee on Character and Fitness of Applicants for Admission to the Bar of Illinois, has deemed the petitioner disqualified for the responsibilities of a member of the bar because of his persuasion not only that mili-

tary force is never justified but that the taking of human life is, regardless of circumstances, always and in all cases, indefensible.

Before undertaking an interpretative demonstration, which demonstration will more appropriately appear in the Argument, that the Supreme Court of Illinois did not act so arbitrarily as to deprive the petitioner of any constitutional right in reaching the conclusion that his convictions and attitudes are inconsistent with those which Illinois requires of her lawyers, we state, without argumentative commentary, the substance of petitioner's own statements of his ethical convictions as those statements appear in the transcript of the full hearing that was accorded him by the Committee.

The statement in petitioner's brief\* that petitioner has been refused admission to the bar "on the sole ground that he is a conscientious objector to participation in war by reason of his religious training and belief and had been classified as such by his draft board," is, although not intentionally unfair, nevertheless quite incorrect and very seriously misleading.

As will appear from the summary of the evidence which is undertaken in the following paragraphs of this statement, petitioner's moral creed goes much further in interdicting homicide than would normally be implied by mere objection to war and military activity. It extends to the complete rejection of those principles of Illinois' constitutional, statutory and common law which not only authorize but require, when necessary, the killing of members of a mob in order to save a prisoner

\* By amicable stipulation of counsel for petitioner, in order to expedite the hearing of this case, the time for filing petitioner's brief has been extended upon petitioner's supplying us with galley proofs thereof. We regret that therefore it is impossible to refer to the pages of petitioner's brief by number.

from being lynched, the taking of life by public officers or private citizens in order to prevent murder, rape or other felony and the preservation of one's own, his wife's, or his child's life by the taking of the lives of other people.

Petitioner, who was twenty-four years old at the time of the hearing (November 27, 1942), spent his earlier days in smaller towns in Montana, Nebraska and Illinois, attended the University of Illinois where he received the degree of Bachelor of Science and Accountancy before studying law (Sup. Tr. 3). He graduated from the University of Illinois Law School and successfully passed the Illinois bar examination.

His religious affiliation has been that of Methodist "as far as he can remember." He has been active in the work of his church, having worked in the Wesley Foundation at the University of Illinois and having been chairman of religious education and worship committees, vice-president and president of the council and student assistant to the minister in successive years. He has preached sermons and led worship societies. He has a brother who is a captain in the military service (Sup. Tr. 4).

He was classified as a conscientious objector by his Draft Board, having been accorded the classification appropriate to one determined to be of that *status* of 4-E. He is not in a conscientious objectors' camp because he did not pass the physical examination.

His church does not, like certain other churches, enjoin conscientious objection to military service as a *credendum* requisite to acceptance of the faith which it preaches, but in petitioner's own language, has "said that they would uphold and support the conscientious

objectors and also conscientious participants" (Sup. Tr. 6).

Petitioner was asked:

"Q. Don't you believe it is the duty of a just government to defend your life and property even by armed force, if necessary?" (Sup. Tr. 6).

He replied:

"A. Not military force at least. It is not its duty to do so. It is its duty to defend it, but not necessarily by military force" (Sup. Tr. 7).

He thinks that the American government is worth defending but the question is "whether the force is either a good defense or the best defense" (Sup. Tr. 7). He thinks that the country may be defended by such means as "psychical forces" (Sup. Tr. 8), prayer, non-violent or passive resistance, such as that exemplified by Ghandi and the like. He makes it clear that, in his view, the United States would not be justified in opposing by the taking of life the conquest and subjugation of America by Hitler, the Japanese or other foreign enemies. He leaves the reader of his testimony in no doubt that he believes that we should feed the people of enemy countries "even though they might be in the army" (Sup. Tr. 16). We should not intercept food supplies to enemy armies by "a food blockade or an armed blockade" (*loc. cit.*).

But petitioner's scruples against force as a means of government do not end with his objection to military force as directed against alien invaders. He does not think that officers of government, such as police officers, sheriffs or other constabulary have a right to save a prisoner from a mob by taking a life of a member of the mob (Sup. Tr. 12) even though the prisoner will lose his own life and the primary function of government,



might the preservation of its citizens from torture and murder, would be set if the mob is not opposed by violence extending to the slaying of its members.

He says that, if a marauder were about to take the life of his wife and child and he could save his wife and child by slaying the marauder, he would not do so (Sup. Tr. 25).

In short, petitioner's scruples predicate a complete, absolute and utter rejection and repudiation of all of those doctrines and principles of law which logically imply the duty or even the mere right to take human life, including not only the right of the United States and state governments to defend themselves by military exertions but the rights of those governments to save life and protect property by killing assailants or felons escaping from the commission of one crime and bent upon committing another.

It was because of petitioner's affirmation of these views that the Supreme Court sustained the Committee's determination upon the narrow and single issue as to whether the petitioner possessed not only moral character but, in the language of Rule 58 of the Supreme Court of Illinois "moral character and fitness" for the office of attorney and counsellor at law as a member of the bar of the Supreme Court of Illinois.

As will be more appropriately demonstrated in the argument, it is because petitioner not only could not himself take life consistently with the precepts of his creed but because he could not conscientiously, as a lawyer, counsel or advise others as to their rights or duties where the taking of life would or might be the result of obedience to the law that he has been deemed not qualified to be an officer of the Supreme Court of Illinois.

## I.

**A license to practice law, being in the nature of a commission appointing the holder to intendency in an office of the court, is not within the purview of the Fourteenth Amendment to the Constitution of the United States, or any other provision of that Constitution.**

This court has twice held that a right to admission to the bar is not a "privilege or immunity" within the meaning of the Fourteenth Amendment.

*In re Lockwood*, 154 U. S. 116.

*Bradwell v. The State*; 83 U. S. 130.

It is true that in both of these cases, the only clause of the Constitution explicitly invoked by applicants for this court's adjudication was the "privileges and immunities" clause of the Fourteenth Amendment.

But it is quite obvious that the reason that the "due process" clause was not invoked was that, if this court should adjudge a license to practice law to be not even a "privilege", *a fortiori*, it would not be either "liberty or property"; and, by parity of reasoning, if it is not a privilege, immunity, liberty or property, but is, as the court apparently recognized in both of those cases, the American equivalent of "calling to the bar," then it is not within the purview of the equal protection clause; for it has never been asserted that applicants for appointment to governmental offices are, in the absence of some such statute as a civil service law, entitled to equal protection as against preferment of one candidate for appointment over another.

That a member of the bar is an officer of the court is a proposition too well settled to require vindication by elaborate argument.

*In re Day*, 181 Ill. 73; *2*

*The People v. Czarnecki*, 268 Ill. 278;

*The People v. Peoples Stock Yards Bank*, 344 Ill. 462.

This point has been briefly argued because it is clear and simple. But unless the principles not only enumerated by this court but implicit in the history of advocacy are to be subverted, it is decisive of this case.

## II.

**The Supreme Court's action in refusing petitioner's application for a license to practice law was not arbitrary or discriminatory.**

Under Point I of this Argument, *ante*, it was submitted that a license to practice law is not within the purview of the Constitution of the United States. If that contention is sustained it follows that the reasonableness or unreasonableness of the Supreme Court's action in this or any other case is not open to inquiry by this court.

Under the present point, however, we assume, purely for the sake of argument, that the question of the propriety of the Supreme Court's action is before this court upon constitutional grounds and that this court must determine, in accordance with the usual canons of constitutional law, whether the record convicts the Supreme Court of that arbitrary and unreasonable conduct which is requisite to sustain a charge of denial of due process or equal protection of law.

### The relevant provisions of the law of Illinois.

The taking of an oath to support the constitutions of the United States and of the State of Illinois has always been prerequisite to admission to the bar of Illinois.

The present version of Rule 58 of the Supreme Court (which is the rule governing admission to the bar) requires, *inter alia*, that each applicant

"shall appear before the Committee" (that is, the Committee on Character and Fitness, which is appointed by the Supreme Court pursuant to other provisions of this rule) "and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar." \*

The Committee is authorized to certify the applicant for admission only if it is of the opinion "that the applicant is of approved character and moral fitness."

A former version of the rule, extant in 1933, further required that the applicant demonstrate that he "understands and believes in the righteousness of the principles underlying the constitutions of the State and of the United States." Although this language no longer appears in the rule, it disappeared at the time that the rule was rewritten and comprehensively revised and its deletion does not argue that attachment to constitutional principles is no longer requisite to admission to the bar of Illinois.

In addition to those general considerations which the Supreme Court of Illinois deems to be implicit in the

\* The full text of the rule, which is long and which contains requirements as to age, citizenship, academics and professional education, passing of bar examinations, etc., is reprinted in full in the Justice's brief in opposition to *certiorari* as an appendix. Its official citation is Illinois Revised Statutes, 1943, Chapter 110, par. 259.58, page 2451.

fundamental thesis of our government and which are hereafter developed, two provisions of the Constitution of the State of Illinois are immediately pertinent:

Section 3 of Article II of Illinois' present Constitution (*Constitution of 1870*, Ill. Rev. Stats. 1943, page 20) consists of the following provision:

"The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the state. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."

The provisions of Sections 1 and 6 of Article XII of the Illinois Constitution (*op. cit.* p. 31) deal specifically and explicitly with state military service and conscientious objectors.

**This Court's pronouncements upon topics relevant to the issues here.**

In the celebrated *Selective Draft Law Cases*, 245 U. S. 366; this court sustained the constitutionality of conscription by involuntary military service under the 1917 Military Establishments Act. The opinion of Chief Justice White derails the power of conscription, as not only a faculty of sovereignty but as the faculty by which sovereignty, with all of its other faculties, is preserved from the earliest of Anglican traditions. After observing that



"the mind cannot conceive an army without the men to compose it," (p. 377)

he epitomizes the history of compulsory military service in America to an extent sufficient to show that in the Revolutionary War, the Civil War and in many instances of internal disorder, exaction of military service has never been deemed to infringe the right of any individual.

Two other holdings by this court that appear to be conclusive upon the present question unless their teachings are to be abandoned are those occurring in *United States v. Schwimmer*, 279 U. S. 644, and *United States v. Macintosh*, 283 U. S. 605.

In both of these cases, it was held that applicant for citizenship, a privilege certainly as precious as a license to practice law, was properly denied naturalization because he (or in the first case, she) would not state that he or she would serve this country in time of war regardless of personal scruples against such service. This conclusion was reached in the absence of requirement in express terms that the applicant be free of such conscientious objections. It was deduced as a logical implication of the requirements of citizenship and of the requirement of good moral character in the civic sense.

It is true that there were dissenting opinions in both cases. It is likewise true that those dissents were written by illustrious jurists, the first dissent being written by Mr. Justice Holmes and the second by Chief Justice Hughes. But even if the dissenting opinions had prevailed, those cases would not sustain the petitioner in the instant case for the following very cogent reasons: In the first place, the dissenting opinions are quite as illuminating as the majority opinions; for in neither

case do the dissenting jurists suggest that a requirement that an applicant for civil privilege subordinate personal scruple to constitutionally enacted military policy would be unconstitutional **if such a requirement had been expressed and not left to inference by construction.** On the extreme contrary, Mr. Justice Hughes, in dissenting in the *Macintosh* case, expressly said that the question was not "one of the authority of Congress to exact a promise to bear arms as a condition of its grant of naturalization." He further said: "That authority, for the present purpose, may also be assumed."

No more did Mr. Justice Holmes even intimate, much less declare, that he would strike down as unconstitutional a provision enacted by Congress requiring absolute obedience, regardless of conscientious objection, to military policy as a prerequisite to citizenship. Moreover in the *Schwimmer* case, Mr. Justice Holmes predicated his decision very largely upon the fact, specific in that case and absent here, that the applicant for citizenship was an aged woman who could not under any conceivable circumstances be regarded as actually available for military service in any event.

Another case that, unless the capital principles of constitutional government which it affirms are themselves to be retracted, is decisively adverse to petitioner is *Hamilton v. Regents*, 293 U. S. 245. In that case, which arose in time of peace, certain adherents of the Methodist faith embraced the tenets of a conference of that church which "renounced war as an instrument of national policy" and, by their own petitions and the intercession of their bishop, sought exemption from the University of California's compulsory military training requirements. Now it should be observed at this point that the right to attend a state university is as surely

and as effectively a privilege from which citizens of the state can not be excluded as is a right to practice law; for this court has held that a Negro student cannot be denied a lawyer's education by a state which offers such an education to white students. *Missouri v. Canada*, 59 S. Ct. 232.

But this court, by a unanimous judgment expressed in a majority and a concurring opinion, perceived not the slightest merit in petitioner's claim to immunity from military service upon the grounds of religion. If, in time of peace, a student may be denied a university education unless he submits to military activities, why may not a candidate for a license to practice law unless he swears (or affirms) that he will support the law—not a part of the law—but the *whole* of the law of the State where he seeks to practice?

**The policy enacted by the present draft laws and the exemption therefrom of conscientious objectors.**

It does not appear that Congress, in declaring that one young man may, by the assertion of even sincere religious convictions, require another young man, who holds convictions more nearly consonant with those upon which his country is founded, to be slain in his place, was actuated by the slightest delicacy of sentiment or compunction for the personal liberty of the conscientious objector. The provision may as well be read as declaratory of a coldly calculated military policy which views those who believe themselves to have commands from God inconsistent with commands from their country as undesirable soldiers.

This court will take judicial notice that soldiers who refuse to obey orders because they deem themselves to

owe a duty to God higher than that imposed by the orders of man may endanger the safety of hundreds of their companions. Exclusion from military service is not, on the one hand, a privilege or, on the other hand, a punishment bearing the imputation of stigma. So far as we are aware, there is no recognized exemption from military service grounded solely upon the rights of the individual. Those with dependents are deferred that their dependents may not become public charges. Those doing work more important than that which presumably would be performed by them in the army are exempt for the good of the nation. The infirm, the feeble minded, and the morally unfit are exempted because their presence in the army would do more harm than good. The same is true of conscientious objectors.

### **Petitioner's beliefs and the office of lawyer.**

It is against the background of these considerations of constitutional and common law that, if the decision of the Supreme Court of Illinois is properly subject to this court's scrutiny at all, that decision must be reviewed. We now turn to the application of these considerations to the case of the instant petitioner.

As has been indicated in the Statement of the Case, petitioner's beliefs go much further than a mere refusal to participate in war or in military activity which may result in the taking of life. He is categorically, absolutely and under all circumstances opposed to the taking of life under the authority of law.

He would not, for instance, countenance the killing of members of a mob in order to save a prisoner or the prevention of the kidnapping of a child, the rape of a

woman or the murder of one or any number of citizens by a law officer slaying the assailant.

It is evident that petitioner does not realize that the threat of force, extending to killing, is inhumanity in every law, in every judgment, in every sentence.

Let us take specific illustrations of the unfitness of one who does not accept this premise for the practice of law in America today:

Suppose that a judgment for possession is recovered by a plaintiff. Normally, the defendant yields possession upon the service of a writ of assistance. But if he does not, if he opposes the officer with force, then the officer must, in obedience to the precept of his writ, use force to expel the defendant from the premises. If the defendant draws a pistol, although the officer may retire instead of killing the defendant, he must, if he is to discharge the duties of his office, return with a constabulary sufficient in number to oust the defendant from the premises. If the premises are forcibly detained not by an humble share-cropper, but by a mighty corporation or a large group of insurgents holding property by opposing physical force to civil process, it may be necessary to exploit the military in order to execute even so simple a process as a writ of assistance.

The suggestion is not fanciful. The military has been used time and again in American history in the enforcement of civil writs.

The Supreme Court of Illinois was justified in concluding that quite apart from any considerations of petitioner's views as to *military* force, his objection to the use of force extending to the taking of life amounted to a repudiation of the ultimate sanction of government.



Petitioner seeks the right to practice law in Illinois. That right not only entitles but obliges those who possess it to advise and counsel others upon the nature and extent of their rights. Petitioner could not conscientiously advise a client as to how far he could go in vindicating such primal rights, upon which all civil and political rights ultimately depend, as those of the preservation of himself and his family. Petitioner could not, for instance, tell a client whose child was threatened with a kidnaping, that he had a right to keep a rifle in the house and use it in order to protect himself, his wife or his children—that is, unless petitioner would be willing to advise another to do those acts which he believes to be murder.

In the celebrated case of *Babington v. Yellow Taxi Corporation*, 250 N. Y. 14, Judge (later Mr. Justice) Cardozo recognized the ancient common law doctrine of *posse comitatus*, holding that a taxicab and its driver might be impressed into pursuit of a fleeing felon, even though the felon might be killed and, as actually happened, innocent bystanders might be injured. The doctrine of *posse comitatus* is, in its fundamental principle, the very essence of Anglican, common law. It is the principle by which legal process must ultimately be vindicated if the less overtly physical threats implied in the more civilized amenities of legal process are opposed by brute force. The constabulary, the militia and the army are nothing more than highly integrated forms of the *posse comitatus*—that is, they represent the impressment of the citizenry into forces which, by lethal sanction or the threat of lethal sanction, constitute the ultimate power of the nation. This principle is, as we have seen, in effect inscribed into Illinois' Constitution by militia provisions which require the service of

even conscientious objectors in time of war. Petitioner's views are inconsistent with this first great precept of Anglo-American jurisprudence and of constitutional law.

It should be emphasized that petitioner is not merely one who wishes to change these laws. There are many lawyers who advocate amendments to the Constitution of the United States, state Constitutions, statutes, the lore of precedents in particular jurisdictions, and the trivial provisions of rules of courts and agencies. But petitioner is not merely one of these. **He is one who says that he will not obey these fundamental precepts of law even while they are the law.**

The Supreme Court of Illinois determined that one who held these extreme views, whatever might be his fitness for calling such as the clergy, medicine, agriculture, or the teaching of non-legal subjects, was prepossessed by conviction, which, though sincere, were inconsistent with the duties of an advocate.\*

Petitioner cannot take an oath to support the Constitution of Illinois. If asked whether he will render the militia service required of him by the organic law of

\* We note and here reply to petitioner's allusion to such cases as *Morgan v. Civil Service Commission*, 131 N. J. Law 411. In that case, it was held that a Jehovah witness, who could not conscientiously salute the American flag, could not on account of this particular precept of his creed be disqualified from the position of bridgetender under civil service laws. Granting that, as this court has held, religious scruples against saluting the flag as implying an act of obeisance to a power other than God do not disqualify a person from attendance at public schools and from discharging such posts as bridgetender, we cannot go further and grant that that scruple would not disqualify him for, for example, such a post as master-of-the-colors or sergeant-at-arms when the duties of the post required presentation of and salutation to the flag.

We can forbear other examples of the principle that, though a particular religious conviction that is not commonly shared may not disqualify its adherent for one post, it will most certainly disqualify from another.

One whose religious convictions oppose the use of surgery and medication could probably not be constitutionally disqualified under

Illinois he must answer, "No." He believes that others should not only oppose but disobey that law.

The question is, not whether this court would have reached a similar determination. The question is whether it can say that the Supreme Court of Illinois acted with such arrant caprice as to deny the petitioner fundamental rights.

That is to say, that is the question if the right to practice law is within the purview of the Constitution at all.

For the reasons submitted under Point I, *ante*, we submit that the considerations developed under this Point need not be regarded.

But if the arguments advanced under Point I, *ante*, must for any reason be rejected, then we submit that the considerations developed under this Point require an affirmance of the order under review.

---

civil service from even very important positions in the treasury department, but would certainly be disqualified from the right to practice medicine or the position of bacteriologist in a public health service. If we assume that in a state where the right to teach in the university was a matter of civil service, a "fundamentalist" could not be disqualified from teaching algebra, it would not follow that, if the fixed policy of the university was to teach the doctrine of organic evolution and the generally accepted views of cosmology, such a "fundamentalist" could not be disqualified from teaching biology and geology.

One who believed that it was a sin to aid others to be married by one not a clergyman might be qualified for a position in the county treasurer's office when he would, solely because of such belief, be disqualified from a post in the county clerk's office where marriage licenses would be issued if the licenses were to be used for the performance of marriage by judges.

In the instant case, petitioner is not a mere objector to his or others military service. He proclaims an absolute repudiation of, and therefore the Supreme Court of Illinois properly inferred a refusal to follow or advise clients to follow, such fundamental principles of Illinois law as those pertaining to the militia, *posse comitatus*, self-defense and other principles that are, from the standpoint of Illinois jurisprudence, juristically primordial.

**Conclusion.**

For the reasons urged in this brief and in the showing in opposition to *certiorari*, we submit that the writ of *certiorari* should be quashed as having been granted in improvident excess of jurisdiction and for want of a federal constitutional question, or if such a question be deemed present, then the determination under review should be affirmed.

Respectfully submitted,

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APR 27 1945

IN THE

# Supreme Court of the United States

October Term, 1944. No. 205.

In re:

CLYDE WILSON SUMMERS,

*Petitioner.*

On Writ of Certiorari to the Supreme Court of the State  
of Illinois.

## BRIEF IN BEHALF OF THE AMERICAN FRIENDS SERVICE COMMITTEE AS FRIENDS OF THE COURT.

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IN THE  
**Supreme Court of the United States.**

No. 205. October Term, 1944.

*In Re.*

**CLYDE WILSON SUMMERS,**  
*Petitioner.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF ILLINOIS.

**BRIEF IN BEHALF OF THE AMERICAN FRIENDS  
SERVICE COMMITTEE, AS FRIENDS  
OF THE COURT.**

**PRELIMINARY STATEMENT.**

The American Friends Service Committee, which we represent, is a non-profit corporation incorporated under the laws of the Commonwealth of Pennsylvania. It is an agency of the several branches of the Religious Society of Friends in the United States conducting religious, philanthropic and relief work in the United States and foreign countries. By reason of the long established principles of this Religious Society relative to the issues of war and military service, the members of this Committee are impelled to sympathy with petitioner, whose right to practice law is here drawn in question on account of his draft exemption as a conscientious objector and because of his religious beliefs. The Committee is further prompted by the fact that the outcome of this case may seriously affect the rights of other conscientious objectors, both within and without the Religious Society of Friends.

All counsel have consented to our filing this brief.

**DECISION OF THE COURT BELOW.**

The only court below is the Supreme Court of Illinois. Its decision, in the form of two letters from the Chief Justice without reasons, is printed in the Transcript of Record (pp. 73-74). It has not been officially reported. This decision affirmed the action of the Committee on Character and Fitness for the Third Appellate District, which is summarized in the Transcript of Record (p. 3); this action also has not been officially reported.

**JURISDICTION.**

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code (28 U. S. C. § 344 (b)).

**STATEMENT OF THE CASE.**

Clyde Wilson Summers, the petitioner, is a native-born citizen of the United States, and since 1929 a resident of the State of Illinois. He is about twenty-six years old (R. 5). His early life was spent on farms. While in high school, he engaged in debates and oratorical contests, and on entering the University of Illinois College of Commerce in 1935 he took the pre-law curriculum, with hopes of later going to law school (R. 65-66). After obtaining the degree of Bachelor of Science, with high honors in accountancy, he entered the College of Law in the same University in September, 1939, and graduated in June, 1942, receiving the degree of Doctor of Law (J. D.) with high honors (R. 61-62). He worked his way through both college and law school, reaching positions of responsibility (R. 5). During his last year in law school he was employed by the Wesley Foundation (the Methodist student organization) as Student Assistant to Rev. Paul Burt, its Director, who states that "I would only appoint some one in whom I have complete confidence and in whom I would be ready to place implicit trust." (R. 67.)

Petitioner is a member of the Methodist Church (S. R. 3-4). During his last five years at the university he was a very faithful attendant at Mr. Burt's church in Urbana and an active participant and leader in the Wesley Foundation, also spending two summer vacations in work with a religious group in New York. The depth of his religious convictions is plain from his own statements in the Record, and it is confirmed by the testimony of his associates (R. 5-26, 57-64, 67-71, S. R. 3-47).

As a result of his religious training and beliefs, petitioner is conscientiously opposed to participation in war in any form. He does not believe in the use of any force that requires the taking of human lives. He held these views as early as 1938, perhaps sooner (R. 6, 13-14, 68-72) and his sincerity is vouched for by fellow-students now in the army, who knew him intimately (R. 65, 70) as well as by his older associates (R. 62-63, 68-69). The Methodist Church, to which he belongs, is not an historic peace church, like the Religious Society of Friends, but its Doctrines, adopted in 1940, declare that "conscientious objection to war is a natural outgrowth of Christian desire for peace on earth" and "claim exemption from all forms of military preparation or service for all conscientious objectors who may be members of the Methodist Church." Such members, if they seek exemption, are stated to "have the authority and support of their church." (R. 10.)

The Selective Training and Service Act of 1940 (54 Stat. 885, 50 U. S. C. App. § 301 ff.) hereinafter referred to as the Selective Service Act, was enacted while petitioner was a law student. He registered in the first draft,<sup>1</sup> and duly claimed exemption as a conscientious objector. His draft board classified him in 4-E without even questioning him and assigned him to "work of national importance under civilian direction," as section 5 (g) of the statute pre-

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<sup>1</sup> The statement by Chief Justice Smith of the Supreme Court of Illinois, in a letter (Record, p. 74) that petitioner "refused to register" must be an oversight.

### *Statement of the Case*

scribes (R. 5, 31-32). He was ready and willing to undertake such service (R. 31-32). He took his physical examination, which he failed to pass, and in consequence he did not have to report to a conscientious objector camp. He is unassigned as physically unfit (R. 31-32). The correctness of these classifications by the draft board is nowhere questioned in the Record. Thus petitioner did everything required of him by the Selective Service Act of 1940.

After graduating with high honors from the College of Law in the University of Illinois (R. 62), petitioner in June, 1942, took the bar examination held under the supervision of the Board of Law Examiners, and was later informed that he received a passing grade. On August 5, 1942, he filed his application for admission to the Bar of the State of Illinois, together with the required affidavits as to his character and fitness (R. 2). At the time of filing, one of the Committee on Character and Fitness for the Third Appellate District (hereinafter called the Character Committee) questioned petitioner's fitness to practice law, because he had been registered and classified as a conscientious objector to war, and consequently failed to pass upon his admissibility. Later petitioner was given an opportunity to appear before the Character Committee *en banc* on November 27, 1942, when the members questioned him concerning his religious beliefs and training, and particularly as to the thought processes which led him to become a conscientious objector (R. 2, S. R. 347).

<sup>2</sup> Chief Justice Smith must have misunderstood the petition when he wrote (R. 74) that petitioner "refused to participate in the present national emergency"; the whole Selective Service Act, according to its preamble, provides for the national emergency by ordering combatant training for some men and work of national importance under civilian direction for other men. The Chief Justice probably meant to say that petitioner claimed exemption from combatant training, to which most citizens are subject because sec. 5 (g) does not apply to them.



On January 5, 1943, petitioner was informed that a majority of the Character Committee had declined to sign a favorable certificate as to his character and fitness for admission to the Bar, and that the committee would not certify him to the Supreme Court of Illinois for admission. No findings in support of this decision were given (R. 3).

On August 2, 1943, petitioner by his counsel filed a petition in the Supreme Court of Illinois for an order upon the Character Committee to certify petitioner for admission to the bar and for an order for his admission to the practice of law in the State of Illinois (R. 1-56). This petition contended at length, among other points, that the action of the Character Committee was inconsistent with the Selective Service Act of 1940 (R. 41-45), and an arbitrary and unreasonable abuse of discretion in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States (R. 46-51), and a penalty imposed upon him because of his religious beliefs in violation of the same constitutional clause (R. 51-55). Among the exhibits annexed to this petition were numerous additional affidavits and letters supporting petitioner's fitness to practice law and speaking of his character in the highest terms (R. 61-73).

On September 20, 1943, the Supreme Court of Illinois made an entry in its records that the Chief Justice had sent two letters, informing Mr. Horace B. Garman, Secretary of the State Board of Bar Examiners, and petitioner, respectively, "that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained." (R. 73-74.) No reasons were given in either letter why petitioner was thought to lack character and fitness for the practice of law.

Meanwhile, despite these determinations of his want of moral fitness to be a lawyer, petitioner has been entrusted with training prospective lawyers. The Dean of the College of Law of the University of Toledo states that the petitioner "displays an extensive and sound knowledge of

law," and is "honest and sincere, dependable, careful and conscientious in every respect; that he respects the institutions of this nation and is a patriotic citizen with a fine sense of responsibility for the future of the country." (R. 63-64.) \*

A reading of the record (including the Return of the Supreme Court of Illinois to this Court's Rule to Show Cause, page 6) makes it clear that the Character Committee and the Illinois Supreme Court based their decision that petitioner was morally unfit to be a member of the bar solely on the ground of his being conscientiously opposed on religious grounds to participation in war and violence and of his being classified by his draft board in Class IV-E as one "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form."

### **QUESTIONS TO BE ARGUED IN THIS BRIEF.**

This brief will present arguments in full on only two of the questions raised by this case:

**I. Is it an unconstitutional invasion of religious freedom as guaranteed by the Fourteenth Amendment for a state court to reject an applicant for admission to the bar on the ground that he is a conscientious objector by reason of religious training and belief, when the applicant is otherwise well qualified in educational and intellectual attainments and in character and has always conducted himself lawfully?**

In support of the unconstitutionality of this judicial action, we shall argue that such a rejection by a state court deprives the conscientious objector of liberty without due process of law through arbitrarily imposing a penalty on his religious beliefs and lawful acts inspired by those beliefs although his religious beliefs and consequent acts bear no reasonable relation to his fitness to practice law. We shall also contend that the state court denies him the equal pro-

tection of the laws by classifying conscientious objectors (or this particular conscientious objector) less favorably than other applicants, solely because of his religious beliefs and consequent lawful acts when such beliefs and acts furnish no reasonable basis for this separate and damaging classification. We shall also take the position that it is an improper and unconstitutional construction of the Illinois statutes and rules of court in regard to admission to the bar to interpret such general phrases as "character and moral fitness" "good moral character and general fitness to practice law" "moral character and good citizenship," so that they must necessarily include a willingness to bear arms in war or in other military service, and that these general phrases should be construed more narrowly in order to preserve their constitutionality by avoiding an interference with religious freedom.

**II. Is it an invalid interference with an Act of Congress, namely the Selective Service Act of 1940, for a state court to reject an applicant for admission to the bar, who is otherwise well qualified, on the ground that his draft board has duly classified him in compliance with section 5 (g) of the said Act of Congress as a person "who by reason of religious training and belief, is conscientiously opposed to participation in war in any form" and has assigned him to "work of national importance under civilian direction" as the said Act of Congress orders?**

It is important to notice that the first or constitutional question covers a much wider range of situations than the second or statutory question. The statutory question applies only to cases where the following factors are present: (1) a Selective Service Act is in force; (2) the applicant is the kind of conscientious objector who falls within the provisions of the Act dealing with the classification and separate training of conscientious objectors. For example, the statutory question would not have arisen in 1939 if an applicant had then been rejected because of religious scruples against bearing arms; and it would not have arisen for

a Methodist objector in 1943 if the present Selective Service Act had resembled the 1917 Act by recognizing as conscientious objectors only members of the historic peace churches like the Quakers. Yet the first or constitutional question would have arisen in both these situations. It will arise whenever a religious conscientious objector is rejected as a lawyer because of his religious beliefs, regardless of the existence or terms of federal military conscription.

On the other hand, the statutory question might become material in one hypothetical situation where religious freedom would not be involved. If Congress should extend the definition of conscientious objectors as widely as the British government has done, so as to include nonreligious objectors, then such an objector might assert that his rejection from the bar interfered with the action of Congress and yet be unable to invoke religious liberty; any appeal to the Fourteenth Amendment would have to rest on some other sort of "liberty" or on the equal protection clause.

### **INTRODUCTION TO THE ARGUMENT.**

As representatives of the American Friends Service Committee, we believe that we can best aid the Court by confining our brief to the two issues just described, which concern religious freedom and the legal position of conscientious objectors in the national life. These are the aspects of the case in which the Committee and other members of the Religious Society of Friends are directly interested, because a decision adverse to petitioner may exclude from the profession of the law many persons who share his religious views as to war.

We do not suppose that the Justices of the Supreme Court of Illinois are merely rejecting petitioner as an isolated individual. We assume that their action in this case accords with the usual practice of courts to decide a particular case in accordance with a general rule of law, which will in future be applied to other persons similarly situated.

Otherwise these Justices would be unfairly discriminating against petitioner in violation of the equal protection of the laws as guaranteed by the Fourteenth Amendment.

Therefore, the rejection of petitioner as a lawyer, unless reversed by this Court, must be regarded as establishing a general rule against the admission of conscientious objectors to the Bar of the State of Illinois. The argument in the Return to the Rule to Show Cause about the inability of petitioner to take the oath to support the Constitution of Illinois would be equally applicable to members of the Religious Society of Friends whose religious views will not let them kill human beings. We can consequently anticipate that the privilege of practicing law in Illinois may henceforth be closed to Quakers and everybody else who is conscientiously opposed to participation in war. Furthermore, nothing in the reasoning of the Justices limits rejections to the duration of the present war or to individuals who have actually been drafted and made claims. So long as the present militia clause of the Illinois Constitution stands unchanged, its provisions as interpreted in the Return will make the possession of religious scruples against killing a sufficient proof of bad character. It is even possible that practicing lawyers in Illinois of otherwise unblemished character can be disbarred for such religious views because the reasoning of the Return must mean that they swore falsely when they were admitted.

Nor is the effect of petitioner's rejection necessarily confined to Illinois. Other states besides Illinois have constitutional provisions which might permit the legislature, under specified conditions, like war or the absence of a federal exemption, to subject religious conscientious objectors to compulsory service in the state militia. Unless this Court repudiates the argument of the Illinois Justices that a remotely possible disobedience to a hypothetical state statute imposing such militia service disqualifies any conscientious objector from taking the oath of an attorney to support his state constitution, then the highest court in



some of these states may adopt the same argument. As a result, conscientious objectors who are otherwise well qualified to practice law, may find themselves shut out from their chosen profession in state after state. The history of state sedition laws and teachers' oath laws and flag salute laws shows how restrictive measures supposedly promoting patriotism will run like wildfire across the country.

The rejection of prospective lawyers for their religious beliefs will not only injure the individuals concerned. What is far worse, it will lessen religious freedom in the United States and imperil the recognition accorded by Congress to the important principle that an American citizen can serve his country in other ways besides fighting.

We now take up the argument of the two main issues.

**ARGUMENT.****I.**

Religious freedom is unconstitutionally infringed when an applicant for admission to the bar of a state is rejected solely because he is a conscientious objector to war on religious grounds, especially when he is duly classified as such by his draft board.

The Fourteenth Amendment declares:

“... nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.”

It is now well settled that the liberty thus protected against state interference includes religious liberty.

Mr. Justice Roberts, in *Cantwell v. Connecticut*, 310 U. S. 296, 303:

“The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act.”

See also *West Virginia State Board of Education v. Barnette*, 319 U. S. 624; *Jamison v. Texas*, 318 U. S. 413; *Murdock v. Pennsylvania*, 319 U. S. 105; *Martin v. Struthers*, 319 U. S. 141, concurring opinion; *Taylor v. Mississippi*, 319 U. S. 583; *Follett v. McCormick*, 321 U. S. 573. Cf. *United States v. Ballard*, 322 U. S. 78.

Since this Court has hitherto upheld religious liberty under the due process clause, we shall devote most of our constitutional argument to the application of this clause to the case at bar. We submit that the essential elements are present: (1) a State (2) is denying liberty of religion (3) without due process of law, that is, arbitrarily without any just or reasonable basis for its action. Each of these three points will be discussed. Finally, we shall consider, as a fourth point, the denial of equal protection of the laws.

**1: The rejection by a state court of an application to the bar is action by a State.**

Although this case does not involve any legislation expressly excluding conscientious objectors from the bar, the situation is substantially similar. The Supreme Court of Illinois, in rejecting petitioner's application for admission, was purporting to apply the standard of good moral character which is imposed upon prospective attorneys by general words in a statute and in a rule of court having the force of legislation.

The Illinois Constitution of 1870, Article VI, sec. 2, as construed in *People v. Peoples Stock Yards Bank*, 344 Ill. 462, 471, 176 N. E. 901, places control over membership in the bar in the Supreme Court of Illinois. The legislature forbids a person to practice law without a license from the Supreme Court (2 Jones Ill. Stat. § 9.01); requires a court certificate of "his good moral character." (*Id.* § 9.02.) The Illinois Civil Practice Act gives the Supreme Court "power to make rules of pleading, practice, and procedure" (18 *id.* § 104.002). That court, in pursuance of this power,

has promulgated Rule 58 on Admission to the Bar.<sup>3</sup> Section I of this Rule declares that persons may be admitted to practice as attorneys if they are "of good moral character" and fulfill other qualifications as to age, citizenship, and satisfactory passing of an examination. Section IX establishes a Committee on Character and Fitness in each appellate court district, which is to pass on each applicant "as to his character and moral fitness." It is to be furnished with affidavits from three persons acquainted with the applicant, each testifying that he is known "to be of good moral character and general fitness to practice law." Each applicant is to appear before the committee and furnish "such evidence of his moral character and good citizenship as in the opinion of the committee would justify his admission." If the committee is of the opinion that the applicant is "of approved character and moral fitness," it shall so certify to the Board of Bar Examiners and "the applicant shall thereafter be entitled to admission to the Bar." Section X empowers the committee to make inquiries relating to "the character and moral fitness" of applicants, including the right to obtain subpoenas and other writs from the court.

This Rule of Court is "an exertion of legislative power" by the State of Illinois. *King Mfg. Co. v. Augusta*, 277 U. S. 100; *Hamilton v. Regents*, 293 U. S. 245, 257. We shall later distinguish the substantive point in the *Hamilton* case, but the procedural point therein is plainly applicable, as construing section 237 of the Judicial Code (28 U. S. C. § 344), on which jurisdiction is based in the case at bar. Mr. Justice Butler said (p. 258):

"The meaning of 'statute of any state' is not limited to acts of state legislatures. It is used to include any act legislative in character to which the

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<sup>3</sup> 18 Jones Ill. Stat. (1944 Supp.) § 105.58. The entire Rule as amended is printed by the Justices in their Return to this Court's Rule to Show Cause, pp. 31-40.

State gives sanction, no distinction being made between acts of the state legislature and other exertions of the state law-making power."

In addition to the requirement of good character thus made by a statute and a rule of court, the Justices of the Supreme Court of Illinois also rely upon a different state statute. In their Return to this Court's Rule to Show Cause in this case (p. 6), they base their rejection of the petitioner upon his alleged inability to take the oath which is necessary for admission to the Illinois bar. In taking this position, the Justices are placing their own interpretation upon the statute. (2 Jones Ill. Stat., § 9.04) which exacts this oath without any mention of the applicant's willingness to bear arms. (See *infra* p. 52.)

Even if the Supreme Court of Illinois were not proceeding under either a statute or a rule of court, its action would be state action within the Fourteenth Amendment. We concede that an issue under the due process clause is not raised by the charge that a state court has erroneously decided the facts or the state law in an ordinary litigation, characterized by proper procedure, even though it takes away a person's property or sends him to prison.

*Central Land Co. v. Laidley*, 159 U. S. 103, 112;

*Tracy v. Ginzberg*, 205 U. S. 170;

*Worcester County Trust Co. v. Riley*, 302 U. S. 292, 299.

But here we have something much more than an ordinary judicial mistake. When a state court construes an undefined standard like "breach of the peace" so as to restrict religious liberty, the due process clause is violated.

*Cantwell v. Connecticut*, 310 U. S. 296, 308;

See *American Federation of Labor v. Swing*, 312 U. S. 321;

Comment, 54 *Harvard Law Review* 1066.

A loose interpretation of "good moral character" so as to restrict religious liberty seems equally open to objection.



Moreover, the Supreme Court of Illinois in the case at bar was not deciding litigation of the usual sort. In affirming the action of the Committee on Character and Fitness, rejecting a conscientious objector on religious grounds, it was exercising the broad powers over the administration of justice which were vested in it by the state constitution. It was selecting the persons who were to take part in the administration of justice, which is like what a judge does when he selects jurymen. When a state judge in selecting jurymen excludes persons on racial grounds, this is state action violating the Fourteenth Amendment.

*Ex parte Virginia*, 100 U. S. 339.

When state judges in selecting attorneys exclude persons on religious grounds, we submit that this is likewise state action within the same Amendment. As the present Chief Justice said in *United States v. Classic*, 313 U. S. 299, 326:

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law."

**2. Religious liberty is in fact gravely impaired and the free exercise thereof is in fact prohibited by the exclusion of religious objectors to war from the practice of law.**

**a. Religious liberty extends to the belief on religious grounds that participation in war is wrongful.**

The case at bar involves only beliefs and lawful acts in pursuance thereof. The petitioner has violated no law. At every step he has done just what he was told to do by Congress, the Selective Service Regulations, and his Draft Board. - We do not need to consider the legal position of persons who have actually violated the Selective Service Act or similar statutes from religious motives.

That conscientious scruples against participation in war are an important part of the beliefs of the Society of

Friends, the Mennonite Church, and the Church of the Brethren has long been a familiar fact in this country. The representatives of these historic peace churches wrote the President, shortly before the introduction of the Selective Service Bill in Congress about

"the historic and unbroken convictions of these groups against war and their devotion to peace and goodwill. These attitudes grew out of deep religious convictions based on the spirit and teachings of Jesus and are a part of a way of life which we believe, cherish the highest values for all men."<sup>4</sup>

The convictions of the Religious Society of Friends may be more fully stated as follows:<sup>5</sup>

For almost three hundred years the Society of Friends, commonly called Quakers, have maintained their testimony against all war and for freedom of conscience and religious liberty. They have believed that lasting good can be accomplished not by war and violence but only by service and an appeal to the divine spark in the life of every man. They have therefore opposed conscription by the State, though encouraging their members to give public service in such constructive ways as their consciences will permit. Especially have they been opposed to military conscription, because it is a part of the war system and violates their deep-seated belief in the sacredness of the personality of every individual and of the principles which Jesus lived and taught. They have been deeply attached to democracy, because in democracy the State exists for the people and not the people for the State, and because in a true democracy the individual citizen has the greatest opportunity for spiritual, intellectual and physical development.

<sup>4</sup> Letter to President Roosevelt, Jan. 10, 1940, reprinted in *Compulsory Military Training and Service: Hearings before the Committee on Military Affairs, United States Senate, 76th Cong. 3d Sess., on S. 4164 (1940) p. 318*. This document is hereafter cited as *Senate Hearings*.

<sup>5</sup> See the statement on behalf of the Religious Society of Friends, *Senate Hearings*, pp. 160-165.

The petitioner's position is substantially similar, although he is a Methodist. His objections to war clearly rest on religious grounds, as shown by his examination before the Character Committee (S. R. 6-10, 14-22, 32-34, 38-39), his letter to its secretary (R. 57-61), and his petition to the Supreme Court of Illinois. (R. 5-16, 20-22, 25-26.) His classification in IV-E by his draft board must have been based on religious grounds—the Selective Service Act so requires.

We submit that liberty to entertain conscientious objections to war is part of the "free exercise" of religion.

**b. The exclusion from the practice of law of adherents of a particular religious belief is in fact a serious impairment of the free exercise of religion.**

It is true that the State of Illinois is not suppressing the historic peace churches. It is not prosecuting petitioner or others who share his beliefs for going to their own churches and for worshipping God as they please. Hence the Illinois Supreme Court may argue that they are not denying religious liberty, but are merely refusing a privilege. The unsoundness of such a position was forcibly pointed out by Macaulay in his maiden speech in the House of Commons in 1833, advocating the removal of Jewish Disabilities. At that time Jews could not sit in Parliament or hold any public office because they had to take an oath "on the true faith of a Christian." Sir Robert Inglis, in defending these disabilities, declared that he had no intention of calling in question the principles of religious liberty and utterly disclaimed "persecution." Macaulay replied:

"It would, in his opinion, be persecution to hang a Jew, or to slay him, or to draw his teeth, or to imprison him, or to fine him; for every man who conducts himself peaceably has a right to his life and his limbs, to his personal liberty and his property. But it is not

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\* Macaulay, Speech on Jewish Disabilities, in Works (Trevelyan ed. 1866) Vol. VIII, 100.

persecution, says my honorable friend, to exclude any individual or any class from office; for nobody has a right to office . . . He who obtains an office obtains it, not as a matter of right, but as a matter of favour.

“Does he really mean that it would not be wrong in the legislature to enact that no man should be a judge unless he weighed twelve stone, or that no man should sit in parliaments unless he were six feet high?

Surely, on consideration, he must admit that official appointments ought not to be subject to regulations purely arbitrary, to regulations for which no reason can be given but mere caprice, and that those who would exclude any class from public employment are bound to show some special reason for the exclusion.

“He will not admit that Jews are persecuted. And yet I am confident that he would rather be sent to the King's Bench Prison for three months, or be fined a hundred pounds, than be subject to the disabilities under which the Jews lie.”

To apply the supposed distinction to the facts before this Court, shall we say that Quakers are not denied religious liberty so long as they are not hanged like Mary Dyer, or, like Ann Coleman, made fast to the tail of a cart driven through eleven towns and whipped on the back, not exceeding ten stripes in each town? Concede for the moment that membership in the bar is a public office as much as membership in the legislature. If Illinois should disqualify Quakers as legislators, would religious freedom be preserved? Surely, a brilliant law school graduate would rather pay a fine of five hundred dollars a year than be kept out of his chosen career at the bar.

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On the treatment of Quakers in Massachusetts, see Brooks Adams, *The Emancipation of Massachusetts* (1919 ed.) Chapter V.

It is well known that direct interference with worship is by no means the only kind of attack on religious liberty. As Mr. Justice Murphy has said:

"From ancient times to the present day, the ingenuity of man has known no limits in its ability to force weapons of oppression for use against those who dare to express or practice unorthodox religious beliefs." (Dissenting in *Prince v. Massachusetts*, 321 U. S. 158, 175.)

Deprivation of various civil rights and opportunities to hold office has always been a valid method of discouraging an unpopular faith.

The men who adopted the First Amendment in 1791 were well aware of the contemporary situation of Dissenters and Roman Catholics in England.

"Since the days of Charles II no one had been eligible for a seat in Parliament, or for any office either in the State or a Municipality, who did not first receive the Sacrament of the Lord's Supper, and take the oaths of allegiance, supremacy, and abjuration. . . . Even those scrupulous individuals, who were ready to admit the doctrines of the Church, but who had conscientious objections to taking an oath, were excluded from office by this unjust law. The whole system of government turned on the supremacy of the Church; and no one was allowed to have any practical influence in the affairs of the State except a churchman.

"The supremacy, which the Church had thus obtained, was felt in almost every sphere of life. The dissenter had to pay rates for the repair of the parish church. . . . Marriage was a religious ceremony which, except in the case of the Quaker or of the Jew, could be performed only by a clergyman of the Church of England. . . . A Roman Catholic or a dissenter could not graduate at an English University. . . . All the great charitable endowments for educational purposes



were under the control of clergymen.\* No one but a churchman could easily obtain an education for his children; no one but a churchman could hope for advancement in the public service.”

The framers of the First Amendment must also have known of the civil disabilities of Roman Catholics in Ireland in 1791.<sup>9</sup> Every person graduating from the only university in Ireland had to take the oath of supremacy, denying the Pope's spiritual authority in the realm, which no sincere Roman Catholic could possibly do. The same oath was required from every person accepting any office, civil or military, and from every Roman Catholic schoolmaster. A Roman Catholic could not be a guardian of his own children or anybody else's, or bear arm, or own a horse good enough for a gentleman to ride. He was debarred from selling or mortgaging his land, from purchasing land or taking it on a long lease, and from inheriting land from a Protestant. The inter-marriage of Protestants and Roman Catholics was forbidden and made void. A Roman Catholic could not be a barrister or a solicitor, and a Protestant who married a Roman Catholic was equally disqualified.

Roman Catholics were first allowed to become barristers in England in 1792, the year after the First Amendment. Next year they were admitted to the army in Ireland but not in England. Jewish brokers on the London Stock Exchange were limited to twelve, by a rule of 1772. The first Jew was called to the bar in 1832, presumably by a change in the rules of the Inns of Court.<sup>10</sup> Jews were not allowed to sit in the House of Commons until 1858, a quarter of a century after Macaulay's speech.<sup>11</sup>

\* Spencer Walpole, *A History of England from the Conclusion of the Great War in 1815* (1913 ed.) Vol. I, pp. 155-156.

<sup>9</sup> Ibid, Vol. II, pp. 236-240.

<sup>10</sup> Ibid, Vol. II, pp. 245-246; Vol. III, p. 311.

<sup>11</sup> Walpole, *History of Twenty-Five Years*, Vol. I, pp. 171-178.

In the American States after Independence, punishment for religious beliefs and prohibition of worship was largely a memory of the seventeenth century, but there were still gross inequalities of religious privileges even though the disabilities were much less than in England and Ireland. In Virginia, for example, salaries of Episcopalian ministers were paid out of general taxation and the vestries could tax members of other churches as well as their own for the relief of the poor.<sup>12</sup> Indeed, when the Revolution began nine of the thirteen colonies had established churches.<sup>13</sup> The desire to remove and avoid such familiar civil burdens must have been a main reason for Jefferson's Statute of Religious Toleration and the religious clauses of the First Amendment, as well as any fears of a revival of persecutions long past. This is shown by the fact that the only reference to religious freedom in the Constitution itself is the prohibition of test-oaths (Article VI, last clause), and by Jefferson's words in the Virginia Statute of Religious Toleration:

“ . . . that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honours and emoluments, those who will externally profess and conform to it . . . ” (12 Henning's Stats. at Large p. 85—1785.)

<sup>12</sup> A. J. Beveridge, *Life of John Marshall*, Vol. I, pp. 221-222.

<sup>13</sup> C. & M. Beard, *Rise of American Civilization*, Vol. I, pp. 294-295. For details on civil disabilities at this time, see Mr. Justice Murphy dissenting, *Jones v. Opelika*, 316 U. S. 584, 622.

As further contemporaneous evidence of the meaning which was attached in 1791 to the brief phrase "free exercise of religion," we quote the much fuller declaration of religious liberty in the New Hampshire Constitution of 1784:<sup>14</sup>

"Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and *no subject shall be hurt, molested, or restrained in his person, liberty or estate*, for worshipping God, in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion, provided he doth not disturb the public peace, or disturb others, in their religious worship." (Italics supplied.)

An equally full section of the Maryland Declaration of Rights of 1776 also invalidates civil disabilities by saying:<sup>15</sup>

"... no person ought by any law to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice; unless, under colour of religion, any man shall disturb the good order, peace or safety of the State, etc."

This Court has repeatedly recognized that religious liberty in the Bill of Rights includes protection against civil disabilities. Mr. Chief Justice Waite, in the earliest decision on religious liberty, called attention to the influence of contemporary civil disabilities upon the drafting of the First Amendment.

*Reynolds v. United States*, 98 U. S. 145, 162.

See also Mr. Justice Roberts in *Cantwell v. Connecticut*, 310 U. S. 296, 303; Mr. Justice Frankfurter in *Miners-*

<sup>14</sup> Bill of Rights, Article V, 4 Thorpe, *American Charters, Constitutions, and Organic Laws* (1909) p. 245.

<sup>15</sup> Article XXXIII, 3 Thorpe, p. 1689.

*ville School District v. Gobitis*, 310 U. S. 586, 593, and dissenting in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 651.

This Court has several times struck down such disabilities. The exclusion of children from the public schools because of a particular religious belief was forbidden in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, where Mr. Justice Jackson pointed out that milder methods of coercion tend to ripen into a drastic refusal of toleration (pp. 640-641):

"As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. . . . Those who begin coercive elimination of dissent soon find themselves exterminating dissenters."

A tax on particular religious activities was invalidated in *Murdock v. Pennsylvania*, 319 U. S. 105. Mr. Justice Douglas said (p. 113):

"The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down."

In a similar license tax case, *Follett v. McCormick*, 321 U. S. 573, Mr. Justice Murphy, concurring, said (p. 579):

"It is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous or bigoted men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds."

Lifelong exclusion of a conscientious objector from the bar is a far heavier burden than any tax, especially the small taxes involved in these two cases.

The imposition of civil penalties for religious beliefs or for conduct pursuant thereto, has been repudiated by other courts.

In *United States v. Hillyard*, 52 F. Supp. 612 (E. D. Washington) an action for contempt was dismissed against a Jehovah's Witness, drawn as a juror who refused to serve because of religious scruples.

*Morgan v. Civil Service Commission*, 131 N. J. L. 411, 36 A. 2d 898, is strongly in point because it involved a rejection from public office. A Jehovah's Witness who was first on the roster of eligibles to fill a vacancy as county bridge attendant was denied the appointment by administrative officials, because he declared his unwillingness on religious grounds to salute the flag. A statute required the appointment unless there was "good cause" to the contrary. The court reversed this action. Heher, J., said (36 A. 2d at 900-901):

"The legislature has not ordained that the right to hold a public office or position may be conditioned upon observance of a compulsory flag-salute ritual. Nor would such a regulation be within its competency. The legislative body does not possess the power thus to control the mind of the individual. [*West Virginia State Board of Education v. Barnette* cited.]

Freedom of religious conscience . . . is susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect. It is not within the power of officialdom to coerce individual affirmation of a belief and an attitude of mind—to compel the individual to give utterance to what is not in his mind. The flag salute is a form of utterance. Coerced acceptance of a patriotic creed is beyond official authority. The conscience of the individual may not thus be trammelled.

"The cherished constitutional liberties guaranteed against impairment by State action prohibit governmental intrusions into the conscience of men. Government may not command individual belief or declaration of belief contrary to faith; nor may it enjoin the harboring of thoughts contrary to one's convictions.



The flag salute is deemed of much less consequence to the common weal than the religious and intellectual sovereignty of the individual."

In *O'Neill v. Hubbard*, 180 Misc. 214, 40 N. Y. S. 2d 202, the minister of a small religious sect was held entitled to a license to perform marriages, although the sect was not listed in the latest federal census as the statute required. This statute was held invalid because the right to have a marriage solemnized by a minister of one's own faith is an incident of the state guarantee of religious liberty.

The denial of a license to engage in a profession may thus harm others besides the applicant. If a minister is unable to perform marriages, this impairs the religious liberty of the members of his faith who want him to marry them. Similarly, if conscientious objectors cannot become lawyers, this lessens the opportunities of other conscientious objectors who want to assert their rights in court with the legal assistance which they prefer. In the numerous draft prosecutions and *habeas corpus* proceedings involving these persons, they are often represented by a lawyer who is himself a conscientious objector. If all men of such views are rejected from the bar or disbarred as soon as their opinions become known, their clients who belong to this religious minority are prejudiced by being forced to select counsel who may not understand their religious position.

Mr. Chief Justice Stone said in his dissenting opinion in *Minersville School District v. Gobitis*, 310 U. S. 586, 606:

"We have previously pointed to the importance of a searching judicial inquiry into the legislative judgment in situations where prejudice against discrete and insular minorities may tend to curtail the operation of those political processes ordinarily to be relied on to protect minorities. See *United States v. Carolene Products Co.*, 304 U. S. 144, 152."

When clients who are conscientious objectors are deprived of a free choice of legal representatives, this tends to cur-

tail "the processes ordinarily to be relied on to protect minorities."

Although only one kind of civil disability has thus far been imposed in Illinois upon the petitioner and other conscientious objectors, more disabilities may logically follow if this be sanctioned. (We shall consider such a possibility shortly, while examining the question whether willingness to bear arms is reasonably related to fitness for public responsibilities.) Hence we submit that this particular religious inequality should be removed unless it be justified by some strong social benefit. That point will next be discussed.

**3. There is no strong public need for the rejection of conscientious objectors from the bar which can justify this serious impairment of religious liberty.**

Since the exclusion of conscientious objectors from the practice of law is a heavy penalty imposed upon them for their religious beliefs, the action of the Supreme Court of Illinois must be invalid unless it be essential for the attainment of some public purpose which is so important as to outweigh even the right to religious freedom. We do not contend that religious freedom is unlimited, but only that the limits must be justified by a plain and strong public need. We concede that there is a public need that lawyers should be fit to practice law, but the question here is whether unwillingness to be a soldier has any reasonable connection with unfitness to do the work of a lawyer. There are no authorities on the point because, so far as we can ascertain, no court has ever seen the slightest connection between these two diverse occupations.<sup>16</sup> Many Quakers who

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<sup>16</sup> In re Sullivan, 57 Mont. 592, 189 Pac. 770, did not involve conscientious objections to war, but evasion of the draft and disloyal utterances. Even so, the applicant was suspended for seven months, while the petitioner has been permanently rejected.

would not bear arms, and many women who could not, have had distinguished and honorable legal careers. The judicial action in this case is of a sort new to America. It is a product of war psychology. Consequently it seems incumbent upon those responsible to demonstrate that some notable gain to society is accomplished by this unprecedented penalty on religious beliefs.

We shall argue that the exclusion of conscientious objectors from the legal profession serves no important public need. In the course of this argument, we shall question the existence of any reasonable relation between conscientious objections to war and bad character or unfitness to be a lawyer. Possibly the Illinois Supreme Court will admit this lack of connection, and contend instead (as they did in their Return to the Rule to Show Cause) that their refusal to admit the petitioner promotes national defense. We recognize that national defense is regarded as one of the strongest of public interests, but we shall ask how it has been furthered by the petitioner's rejection. The country has not gained a soldier; it has merely lost a lawyer. We shall give special and separate attention to the decisions of this Court on conflicts between religious beliefs and national defense, such as *United States v. MacIntosh* and *Hamilton v. Regents*, and we shall show that they are distinguishable from the case at bar. Because neither unfitness to practice law nor national defense is a reasonable ground for rejecting the petitioner, we shall submit that no sufficient need is served by the interference with religious liberty in this case.

In support of our position, we shall first present the authorities on restrictions on religious liberty in general, postponing the naturalization and military conscription cases for separate consideration later. We shall then give detailed discussion of the situation in the case at bar.

**a. Religious liberty can only be impaired when it is overridden by a strong public interest.**

It is not enough that *some* public interest is served by the restriction. Most of the statutes and ordinances which have been invalidated had a social purpose; otherwise they would hardly have obtained a majority vote. But only a very strong public interest will overcome religious liberty.

The general principle that religious liberty is not absolute has been frequently declared by this Court. Mr. Justice Field, in *Davis v. Beason*, 133 U. S. 333; 342-343:

"It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation."

Mr. Justice Roberts, in *Cantwell v. Connecticut*, 310 U. S. 296, 303-304:

"Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom."

Examples of religious practices which can be constitutionally prohibited, according to decisions or dicta of this Court and lower United States courts, are: bigamy and polygamy, which have "always been odious among the northern and western nations of Europe" and are "crimes by the laws of all civilized and Christian countries," *Reynolds v. United States*, 98 U. S. 145, *Davis v. Beason*, 133 U. S. 333; human sacrifice and promiscuous sexual intercourse, *Davis v. Beason* at pp. 343-344; thuggery and the religious belief in assassination, *Mormon Church v. United States*, 136 U. S. 1, 49, *Guiteau's Case*, 10 Fed. 161, 175 (Supreme Court, D. C.); circulation of obscene writings, *Knowles v. United States*, 170 Fed. 409, 411 (C. C. A. 8th); unlicensed street parades, *Cox v. New Hampshire*, 312 U. S. 549; using offensive and derisive language to any person lawfully in a public place, *Chaplinsky v. New Hampshire*, 315 U. S. 568; encouraging young children to sell religious publications on the streets in violation of statute, *Prince v. Massachusetts*, 321 U. S. 158; and refusal to pay taxes in furtherance of an end condemned by conscience as immoral, *Hamilton v. Regents of University of California*, 293 U. S. 245, 266, *Baxley v. U. S.*, 134 F. 2d 937 (C. C. A. 4th).

We now turn to a second group of cases, which support our next proposition: It is not enough to validate a restriction on religious liberty that it serves *some* public need; that need must be so strong as to override great need for freedom. The ordinary elements of the police power which might justify a deprivation of "property" are not sufficient to constitute due process of law when "liberty" of religion is denied. The case at bar calls upon this Court to balance other social interests against freedom of religion; and whenever this happens, this Court makes freedom of religion weigh heavily in the scales.

Mr. Justice Jackson expressed this important principle in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 639:



"In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed *on such slender grounds*. They are susceptible of restriction only to *prevent grave and immediate danger* to interests which the State may lawfully protect." (Italics supplied.)

The need for a cohesive national unity was held in this case to be insufficient to override liberty of thought and religion.

In the case at bar there is no enactment by the elected representatives of the people in the Illinois legislature that conscientious objectors should be excluded from the bar. Even if there were a statute to that effect, we submit that it should not be conclusive evidence of the existence of a sufficient public need to validate the restriction on religion. This was stated by the present Chief Justice in dissenting from the judgment in the *Gobitis* case, which was overruled by the *Barnette* case, just quoted:

"The guaranties of civil liberty are but guaranties of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them. They presuppose the right of the individual to hold such opinions as he will and to give them reasonably

free expression, and his freedom, and that of the state as well, to teach and persuade others by the communication of ideas. The very essence of the liberty which they guaranty is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion. If these guaranties are to have any meaning they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.

"History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities. The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection. It cannot conceive that in prescribing, as limitations upon the powers of government, the freedom of the mind and spirit secured by the explicit guaranties of freedom of speech and religion, they intended or rightly could have left any latitude for a legislative judgment that the compulsory expression of belief which violates religious convictions would better serve the public interest than their protection."

*Minersville School District v. Gobitis*, 310 U. S.  
586, 604-605.

The case at bar presents less difficulty than the two decisions on the compulsory flag salute just discussed, because it raises no question as to the strength of the pre-

sumptive validity which should be attached to the action of a state legislature.

**Illinois has placed no legislative ban on the admission of conscientious objectors to the bar.**

Not only has Illinois not banned conscientious objectors by legislative action, but the Bill of Rights of the Illinois Constitution gives wide protection to religious opinions. Article II, Section 3, of the Constitution provides:

"The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness; or justify practices inconsistent with the peace or safety of the state. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship."

To deprive petitioner of the privilege of practicing law in Illinois on account of his religious opinions would seem to be a violation of the spirit, if not of the letter, of this provision. However this may be, it is clear that the only statutory provision here involved is the requirement that applicants for admission to the bar must be of "good moral character" (2 Jones Ill. Statutes §9.02). It is the judges of the Supreme Court of Illinois who have read into this statute an obligation to bear arms. Consequently, this Court is not now called upon to undertake the delicate task of substituting its judgment for the judgment of the elected law makers. Instead, this Court is asked to compare its interpretation of the broad legislative policy in the Illinois statute with the interpretation given to the same statute

by the state court. Thus there is here no problem of declaring a state statute invalid, but merely of saying that the legislation is construed so as not to conflict with religious liberty.

When the case at bar is approached in this way, we believe that the situation closely resembles that in *Cantwell v. Connecticut*, 310 U. S. 296. The Court was there asked to correct the state judges' interpretation of the broad common law concept of "breach of peace"; and here it is asked to correct their interpretation of the broad legislative concept "good moral character." In the *Cantwell* case this Court stressed the fact that the legislature had not specifically penalized the particular religious activity under consideration. Mr. Justice Roberts said (pp. 307-308):

"Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer. Such a declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations. Here, however, the judgment is based on a common law concept of the most general and undefined nature.

"The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. Equally obvious is it that a State may not unduly sup-

press free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application."

In the *Cantwell* case, the general phrase was held to be improperly stretched by the state court to include and punish conduct with a religious object. In the case at bar, the judges of the Supreme Court of Illinois have contracted the general phrase "good moral character" in the statute and court rule—a phrase which is proper in itself—so as to exclude and penalize religious beliefs. We submit that this Court will undertake a familiar task if it corrects such a wide discretion in the application of a "concept of the most general and undefined nature," and shapes the judicial interpretation of the legislative standard so as to leave liberty of religion unimpaired.

The public interest in obtaining revenue from businesses was held not to be strong enough to justify an interference with religion in *Follett v. McCormick*, 321 U. S. 573. Mr. Justice Murphy, in concurring, used language which is appropriate to the employment of the licensing power against a particular religious belief in the case at bar. He said (p. 579):

"It is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous or bigoted men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds."

In *United States v. Ballard*, 322 U. S. 78, religious liberty under the First Amendment was considered to be so vital that the public must be subjected to some risk of fraudulent solicitation of funds through the mails for a religious organization of dubious sincerity. Although the



public interest in protection from fraud was the basis of the statute in question, this Court held that the position of the lower court invaded religious liberty by leaving the truth of the defendants' religious beliefs to the jury. Mr. Justice Douglas said (p. 86):

"Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. . . . Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views."

This language is applicable to aspects of the case at bar. The members of the Character Committee and the Supreme Court of Illinois should not be permitted to penalize a conscientious objector for his religious beliefs even though they cannot understand these beliefs and conclude that they are unsound.

Other cases have held that religious liberty required a sacrifice of the following public interests: promotion of national unity through ceremonies; regulation of street-selling; regulation of house-to-house canvassing; compul-

sory service of jurors; and the restriction of the power to perform marriages to clergymen of well-recognized denominations. (See cases cited supra page 24.)

It is important to observe that the public interest which had to give way to religious liberty in many of the cases just discussed was by no means negligible. The division of opinion in this Court in several cases concerning Jehovah's Witnesses was due to the difficulty of appraising the magnitude of the public interest involved. In comparison with the social purposes which were overridden by these decisions, the value of excluding conscientious objectors from the bar seems small indeed.

**b. There is no strong public need for the rejection from the bar of a duly classified religious conscientious objector.**

The most substantial question under this sub-head is, whether the religious beliefs of petitioner and the historic peace churches have any reasonable relation to unfitness to practice law and bad moral character.

**Religious objections to war and fitness to be a lawyer.**

We stress again the point that this brief is not concerned with unlawful acts impelled by religion. We are not considering here whether a Methodist conscientious objector who went to prison during the last war, when he had no statutory draft exemption, should be admitted to the bar. We leave entirely aside the effect of religious liberty upon an actual law breaker. Petitioner is in no such situation. His every act has been lawful.

Consequently, we submit that the judges of the Illinois Supreme Court are confronted with this dilemma: Either (1) they rejected petitioner because of his lawful acts and the legal status conferred upon him by Congress and federal officials; or (2) they rejected him because of his religious beliefs. There is no third possibility.

If the first alternative is the case, then the Supreme Court of Illinois has said, in effect: "You are unfit to be a lawyer simply because you have obeyed the law." The situation is then much the same as if that court had upheld a hypothetical Illinois statute imposing a heavy annual fine upon all citizens of Illinois who should be classified in IV-E.

Let us consider the second alternative, and assume that petitioner was rejected, not on account of his draft classification *per se*, but because of his religious beliefs which brought about that classification. The Justices in their Return take the position that they were justified in excluding a man for his mere beliefs because those beliefs might perhaps some day lead him to violate a possible state conscription statute.

This position that mere beliefs can be penalized so long as they arouse vague apprehensions of some remote danger to society is open to grave question in view of what Mr. Justice Roberts stated, on behalf of a unanimous Court, in *Cantwell v. Connecticut*, 310 U. S. 296, 303-304 (italics supplied):

"Thus the Amendment embraces two concepts—freedom to believe and freedom to act. *The first is absolute*, but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."

Since petitioner's conduct in this case complied with every regulation by Congress, the interference was with his "freedom to believe", which this Court has declared to be "absolute".

We realize that this declaration of Mr. Justice Roberts should not be applied with a literal rigidity, for a few interferences with liberty for religious beliefs unaccompanied by acts have been judicially sanctioned under the First Amendment. The naturalization cases, to be considered later, are an example. Again, an alien religious anarchist or religious polygamist, who had been entirely law-abiding,

can be excluded from our shores or even deported after many years of residence in this country. *Lopez v. Howe*, 259 Fed. 401 (C. C. A. 2d), appeal dismissed, 254 U. S. 613. These are easily distinguishable from the case at bar because the control of Congress over immigration is extraordinarily wide and because the beliefs in question have been repeatedly and specifically stigmatized by Congress as dangerously liable to produce very objectionable acts in the great run of cases. There is no similar experience that religious conscientious objectors are dangerous to society; and here Congress has expressly recognized just the opposite conclusion by using them for "work of national importance" during the emergency. Furthermore, these instances of legal disqualifications for beliefs are very rare and ought to be kept so. That some persons in authority may fear remote injuries to society from those beliefs is not a proper justification for suppressing them. Practically every religious persecution in history has been defended on the ground that the believers were prone to commit unlawful acts. English Roman Catholics might assassinate the King; Russian Jews might murder Christian children. Religious toleration cannot exist unless such fears are courageously ignored.

The distinction between beliefs and unlawful acts is very important despite occasional exceptions. Almost all the cases set forth in this brief as upholding restrictions on religious liberty involved acts or refusals to act.<sup>17</sup> Hence those cases furnish no support for the severe burden placed on religious beliefs in the case at bar.

Petitioner, who has obeyed the law, falls outside the reasons for permissible restrictions on religious liberty which were laid down by Mr. Justice Black and Mr. Justice

<sup>17</sup> The exceptions were the disqualification of atheists as witnesses, and of those conscientiously opposed to the death penalty as jurors in capital cases. Here only beliefs were involved. But the penalties were not comparable with exclusion from the bar.

Douglas, concurring in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 643:

"No well-ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity."

Particularly appropriate in this case is the century-old declaration of Chief Justice Mellen of Maine in *Waite v. Merrill*, 4 Greenl. 102:

"We must remember that in this land of liberty, civil and religious, conscience is subject to no human law; its rights are not to be invaded or even questioned, so long as its dictates are obeyed, consistently with the harmony, good order and peace of the community. With us modes of faith and worship must always be numerous and variant; and it is not the province of either branch of the government to control or restrain them, when they appear sincere and harmless."

The only real question in this part of the case is whether the petitioner's beliefs *now* unfit him for the practice of law. We shall now endeavor to examine this question in the light of plain common sense.

We recognize that some religious opinions might properly disqualify an applicant to the bar. For example, assume that he insisted that the only kind of binding law was that set forth in Leviticus and the other early books of the Old Testament, and asserted that he owed no respect to the man-made law of American legislatures and judges which he had mastered in law school. Obviously such a per-



son would be better fitted for a preacher in some literal sect than for a lawyer, and his rejection by the Committee on Character and Fitness might not be considered unreasonable despite his unblemished reputation. Furthermore, we concede that the particular religious beliefs of this petitioner might reasonably disqualify him for certain occupations. Unwillingness to bear arms may unfit a man to be a policeman or a guard on an armored pay-roll truck, because the unhesitating and efficient use of force is a possible incident of the job. But it is no part of a lawyer's duties to bear arms.

It may be argued that lawyers are subject to the Selective Service Act. So are plumbers and barbers and electricians. Yet nobody would think of conditioning licenses in these occupations upon the applicant's religious views about war. Liability to the draft applies to all citizens regardless of their trades or professions, except as they may be duly exempted. When a lawyer is conscripted into the army, he is no longer practicing law. We submit that petitioner's conscientious scruples about killing have no more to do with his actual fitness to advise clients or address juries or draw wills than with his fitness to install a baseboard light-socket.

As Macaulay says in his *Essay on the Civil Disabilities of the Jews*: "The points of difference between Christianity and Judaism . . . have no more to do with his fitness to be a magistrate, a legislator, or a minister of finance, than with his fitness to be a cobbler. Nobody has ever thought of compelling cobblers to make any declaration on the true faith of a Christian. . . . Men act thus, not because they are indifferent to religion, but because they do not see what religion has to do with the mending of shoes." *Works* (Trevelyan ed. 1866) Vol. V, p. 458.

### **Religious views on non-military use of force.**

It may be suggested that conscientious objectors to war may extend their religious scruples to the use of force in

other connections; that law depends on force in the imposition of punishments, the levy of executions on judgments, and evictions; and that consequently these objectors are unfit to become part of the administration of justice. Since this point is not mentioned by the Justices in their Return, we do not know that it affected their action or the action of the Character Committee as a whole. Still, the letter received by the petitioner from Mr. Garman, the secretary of the Character Committee (R. 56-57), suggests that this was his chief reason for not giving petitioner a certificate. Mr. Garman says in part:

"You eschew the use of force regardless of circumstances but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

"Your conduct is governed by a higher law which we all hope may some day prevail. In the meantime most of us think chaos would prevail and civilization might be destroyed if the wolves are not kept at bay. Lawyers have the job of aiding in the administration and enforcement of the law,—all the law. What protection can the law be to the weak if lawyers do not consider its mandates to be entitled to obedience by force if necessary?

"My point is merely that your position seems inconsistent with the obligation of an attorney at law."

Inasmuch as the views expressed in this letter may conceivably be applied by this and other character committees to members of the historic peace churches who seek to become lawyers, we deem it important, as representatives of the American Friends Service Committee, to repudiate these views as unsound.

In the first place, we submit that this letter is not a satisfactory statement of petitioner's position as revealed by his replies to the Character Committee (S. R. 8, 11-13, 25, 30-33, 38, 41-42). We would summarize the testimony on his position as follows: His position is what is best known as religious pacifism. It is essentially like the historical Quaker position and is in accord with that of the Fellowship of Reconciliation. He feels that he cannot do either combatant or non-combatant military service because he believes that to be contrary to the teachings of Jesus. He would not do even non-combatant service under the military authorities, because he thinks that the whole military system is wrong. He could not use violence to protect himself or in defense of others. He does, however, believe in the use of a police force which acts as a restraining and corrective force and proceeds against individual wrongdoers. He does not believe in any force that requires the taking of human lives, and so is opposed to capital punishment. As a practitioner, he would not be willing to prosecute a murder case if he had to ask for the death penalty; but if appointed to defend somebody indicted for murder, he would defend him as the law provides and assert self-defense if relevant, even though he does not believe in using violence to defend himself. In settling disputes, he would advise a client as to his rights and try to get the parties to settle things without going to court, "just to get together as friends. . . ." He stated:

"I think . . . I have something to offer . . . , because I believe in settling it peacefully and settling it on terms of friendship and understanding rather than going through court. If there is no other way to obtain justice, then that is what the courts are for, but it seems to me that the lawyer's main job or one of the main jobs is to try to get people to work things out peacefully. . . . Lawsuits do not bring love and brotherliness—they just create antagonism.

"Q. Would it be your effort to eliminate all litigation possible if you were admitted to the bar?

"A. All that it is possible to without sacrificing the client's interest. A man can not do that. I mean he is entrusted with that. Of course, a man can not play two sides of the fence. He can not act as attorney for both parties. I know that. And yet if there is an opportunity to get both lawyers together and the parties together and sit down and talk it over and settle it peacefully, he should do that." (S. R. 31.)

He would refuse to represent a client in a civil case if he believed that that side was unjust although the client was relying on his legal rights. If it was a criminal case, he would, of course, be bound to take it and get as much justice as he could, that is, protect all of his client's rights that he could. He would not be willing to take an eviction case if it would mean sending a man out in the street to freeze and starve. He would simply tell his client that his conscience would not let him do it and that the client would have to find some other lawyer who did not feel the same way. Finally, he is interested in legal reforms:

"I think there is work that needs to be done. A lot of prison reform that needs to be done. I think it is unchristian the kind of prisons we have. I think there are a lot of other things that perhaps the law has a place to do.

"I think the law has a place to see to it that every man has a chance to eat and a chance to live equally. I think the law has a place where people can go and get justice done for themselves without paying too much, for the bulk of the people that are too poor. I have been particularly interested in the legal clinics that have been set up in different places." (S. R. 30.)

We submit that nothing here is inconsistent with the obligation of an attorney at law. Petitioner is unwilling to take a civil case in which he does not believe, and the same

unwillingness is often attributed to Abraham Lincoln. He is anxious to settle cases out of court if possible, and so are most wise lawyers. We concede that petitioner's unwillingness to engage in certain kinds of litigation makes him fall short of Mr. Garman's standard that "lawyers have the job of aiding in the administration and enforcement of all the law." What of it? Mr. Garman's standard is Herculean. We submit that no single lawyer aids in the administration of all the law, and that no applicant to the bar ever expects to do so. If a Roman Catholic, who is conscientiously opposed to divorce admits that he would never appear in a divorce case, then he cannot render complete legal services to his clients. Must he therefore be excluded from the practice of law? Even if petitioner is not eager to engage in contentious litigation, almost every practicing lawyer devotes a very large percentage of his time to keeping his clients out of court just as petitioner proposes to do. Many practitioners have not seen the inside of a courtroom for years.

The unreasonableness of the position that the petitioner is unfit for the bar becomes still more apparent when his testimony at the hearing is supplemented by his letter to Mr. Garman (R. 57-64) and the written testimony as to his character which was furnished (R. 61-72). He displays high ideals of the duties of a lawyer. Some may think that his distinction between the use of force by a soldier and by a policeman is not entirely logical, a possibility which he admits (R. 58, 60); this merely illustrates the statement of Judge Augustus Hand: "Religious belief . . . accepts the aid of logic but refuses to be limited by it." *United States v. Kauten*, 133 F. 2d 703, 708 (C. C. A. 2d.) Any person who has heard or read the testimony of a conscientious objector under a rigorous cross-examination will easily understand how hard it is for him to be entirely consistent in his explanations of the manner in which he adjusts his religious scruples to the exacting demands of ordinary life. This man's unusual fitness to be a lawyer is attested by



those who knew him intimately. His college and law school contemporaries, now in the army, speak of him in the highest terms. The dean of the law school where he studied writes (R. 62):

" . . . that he has never observed anything in the opinions and conduct of the applicant that leads the affiant to believe that the applicant's adherence to his religious convictions is inconsistent with the highest qualifications associated with a lawyer in the practice of law. Finally, affiant alleges that it is his belief that the applicant has an unusually high sense of ethical values and that he believes the applicant's conduct in the practice of law would be governed throughout by exemplary ethical principles."

The dean of the law school where he teaches has already been quoted. (Supra pp. 5-6.) His pastor writes (R. 67):

" . . . that Mr. Summers is one of the finest young men that it has been my privilege to know, and I have been in a position to know many. I have never failed to be impressed by his intellectual and moral honesty which he has maintained in every circumstance in which I have had the opportunity to observe him, often at the cost of what might have been regarded as his personal advantage. I have known but few to equal him in genuine social concern and unselfish devotion to the public good of any community of which he was a part."

This is the kind of young man whom a rule against religious objectors excludes from the bar. This is the man who is singled out for denial of his certificate of good character. The worst one can say against him is that he may be a bit too conscientious for the wear and tear of ordinary life, but the bar can well afford to have a few members with that fault.

**Good Citizenship.**

Probably the most persuasive argument against petitioner would consist of two propositions like this: (1) A good lawyer has an unusually high obligation to be a good citizen. (2) Willingness to bear arms is an essential of good citizenship. *Ergo*, a conscientious objector cannot be either a good citizen or a good lawyer.

We heartily accept the first proposition, but we dispute both the second proposition and the conclusion: Insofar as the alleged inability of a citizen with religious scruples against war to be a good citizen is based upon judicial decisions denying naturalization to aliens with similar beliefs, we postpone consideration of the application of those decisions to the different facts of the case at bar. For the moment we are concerned not with legal doctrines but facts. And we submit that the proposition that a conscientious objector is necessarily a bad citizen disregards all our history since colonial days.

The activity of Friends in law and public life in the colonies was not only in Pennsylvania, where the Quakers were in political control until 1756 and were members of the legislative assembly, judges, and lawyers, but also in Rhode Island, where for more than 100 years they had an important share in the direction of the affairs of the colony, and in North Carolina, where they were active in public affairs during the early history of the colony—(Rufus M. Jones, "The Quakers in the American Colonies," 171-212, 338-353, 475-494). While they largely withdrew from public life in the eighteenth century, there are today Quaker judges and a considerable number of Quaker lawyers in active practice.

Among prominent members of the Society of Friends connected with law and government in the early history of Pennsylvania, other than William Penn himself, may be mentioned: John Kinsey (1693-1750), lawyer, politician, and jurist; William Lewis (1751-1819), lawyer, judge; David Lloyd (1656-1731), Chief Justice of Pennsylvania;

Nicholas More, first Chief Justice of Pennsylvania; Nicholas Waln (1742-1813), Quaker preacher and lawyer.

Mr. Justice Holmes remarked: "I would suggest that the Quakers have done their share to make the country what it is." (Dissenting in *United States v. Schwimmer*, 279 U. S. 644, 654.)

We do not find in the facts of human life any indication of a reasonable relation between religious scruples against war and unfitness to be a lawyer.

We now turn away from facts to law, and consider whether there is some constitutional doctrine which confers upon the State of Illinois the power to exclude conscientious objectors from the bar regardless of their good character and their fitness in fact to practice law. The Illinois Supreme Court relies on two doctrines to support this thesis: (1) the analogy of the constitutional power of the national government to deny citizenship to religious objectors, recognized in the *Macintosh* case; (2) the power of the State to require attorneys to take an oath of allegiance to the state constitution.

We shall next discuss each of these doctrines in turn.

### The *Macintosh* case.

In *United States v. Macintosh*, 283 U. S. 605, the District Court had denied citizenship to an alien who refused to declare his unqualified willingness to bear arms in war. The precise point decided by this Court was that Congress by requiring an oath to support and defend the Constitution of the United States had impliedly made such willingness one of the statutory conditions of naturalization.<sup>18</sup> This result was reached by a majority of one. The dissenting opinion by Mr. Chief Justice Hughes was supported by the present Chief Justice and Justices Holmes and Brandeis.

<sup>18</sup> Two other decisions to the same effect were *United States v. Schwimmer*, 279 U. S. 644 (1929); *United States v. Bland*, 283 U. S. 636 (1931). These will be understood to be included in our discussion of the *Macintosh* case.

The authority of the *Macintosh* case does not seem strong today; the dissenting opinion appears to have been cited and quoted in the recent opinions of this Court much more often than the decision itself. See, for example, *Schneiderman v. United States*, 320 U. S. 118. For the reasons given in the brief filed in the *Macintosh* case by *amici curiae* on behalf of the American Friends Service Committee, which we now represent, we believe that this case was wrongly decided. Although it has not been overruled, we hope that this Court will not extend this decision beyond its precise facts. We submit that a precedent of such doubtful standing should not be freely expanded, and ought not to affect the very different situation of the citizen in the case at bar. We also venture to think that the opinion of Mr. Chief Justice Hughes has been accorded by this Court a much higher authority than belongs to dissenting opinions generally, so that we shall be justified in using extensively his views of oaths of allegiance when we discuss that subject.

The justices of the Illinois Supreme Court state that they are not relying upon the actual decision in the *Macintosh* case as to statutory interpretation, on which this Court was divided, but on the broader principle of the constitutional power to exclude religious objectors, which was accepted by both the majority and the minority. (R. 26-27.) Mr. Chief Justice Hughes said that "the authority of Congress to exact a promise to bear arms as a condition of its grant of naturalization . . . , for the present purpose, may . . . be assumed." We understand their position to be as follows: The Justices of the Supreme Court of Illinois have powers over membership in the state bar analogous to the powers of Congress over naturalization. In the case at bar, these Justices have determined that "the obligation of military service in time of war is absolute and cannot be conditioned upon the scruple of the citizen." (Return, p. 26.) Their action is comparable to "a provision enacted by Congress requiring absolute obedience, regardless of

conscientious objection, to military policy as a prerequisite to citizenship." (Id. p. 25.) In the *Macintosh* case, all the members of this Court agreed that religious liberty would not be violated by such an express denial of citizenship because of religious beliefs. Therefore, religious liberty is not violated by an express denial of the right to practice law because of similar beliefs.

Before questioning the soundness of this analogy between naturalization of aliens and admission of American citizens to the bar, we wish to observe that the Justices' description of the procedural situation is not quite correct. Their action in this case does not resemble a statute expressly excluding conscientious objectors from a privilege. Of course, the Supreme Court of Illinois has law-making powers over admission to the bar, but it exercised those powers when it promulgated Rule 58. (Supra p. 13.) This Rule contains no reference to conscientious objectors, nor does any state statute on the bar which is involved in this case. If Rule 58 had been amended so as to make willingness to bear arms a prerequisite to the practice of law, then indeed the procedural situation would be as contended. But the relevant provisions of Rule 58 remain unchanged. Consequently all the "legislation" in this case states only broad standards of character and fitness, which are somewhat like the broad standards in the Naturalization Act interpreted by a divided Court in the *Macintosh* case.

What was the real nature of the Justices' action in the case at bar? They affirmed the action of the Character Committee in a brief memorandum: this is not the way Rules of Court are amended. They were merely approving what the Character Committee had done under existing legislation. What then did the Character Committee do? It interpreted the general standards in Rule 58 to include a requirement of a willingness to bear arms regardless of religious beliefs, and thus impaired religious freedom. The Supreme Court of Illinois upheld this interpretation. Thus petitioner is excluded from the Illinois bar, not by legisla-



tion aimed at religious objectors, but by the judicial and administrative interpretation of legislation which says nothing about such objectors. Procedurally, the Character Committee and the Supreme Court of Illinois were doing exactly what the naturalization officials and the District Court did in the *Macintosh* case in a different substantive situation—they construed broad statutory standards of fitness in such a way as to interfere with religious liberty.

Therefore, the action is not comparable to a statute, as the Justices contend in their Return. In fact, the precise question before this Court is the same procedural issue as in the *Macintosh* case and in *Cantwell v. Connecticut*; thus the *Cantwell* case has some bearing on the present authority of the *Macintosh* case. This issue is the constitutionality of construing a broad standard so as to penalize religious liberty.

We do not wish to press this procedural point; most of our argument is designed to show the unconstitutionality of a statute or rule of court expressly excluding religious objectors from the bar. But we have thought it necessary to refute the contention of the Illinois Supreme Court that their action in this case is sanctioned by the unanimous agreement of this Court in *United States v. Macintosh*.

We now turn to the substantive problem as to the soundness of the suggested analogy between naturalization and admission to the bar. Even if the decision of the bare majority in the *Macintosh* case be still law, it was concerned with a very different subject matter than this case. American citizenship is perhaps the greatest privilege which Congress can confer. Consequently Congress possesses and ought to possess enormously wide powers in determining the tests of fitness for citizenship, for sharing every right of a native-born person except eligibility to the Presidency and Vice-Presidency. If the wrong kind of people are naturalized, mistakes can rarely be corrected no matter how undesirable the new citizen later shows himself to be. Fitness for the bar relates to one occupation,

to a much narrower range of activities and influences. If serious mistakes are made, they can be remedied through disbarment.

The suggestion is made that all the prerequisites for citizenship should also be prerequisites for the practice of law. Let us see where this would lead us. The Naturalization Statutes have long made discriminations of race and color, and Congress can constitutionally add others if it chooses. Suppose that Congress refused naturalization to Negroes from Africa. Should a state court thereby be constitutionally enabled to draw the same color line against native-born Negroes seeking to practice law?

The proposition we are contesting runs thus: Conscientious objections to war can keep an alien from becoming a citizen, therefore they can keep a citizen from becoming a lawyer. This seems to us a *non sequitur*. Much can be asked of an alien which is not required of a citizen. If an alien finds himself excluded from naturalization and other privileges here, he still remains a subject of his original country clothed with the full rights it confers. But a citizen cannot be anything else than a citizen while he lives in the United States. If he is denied a valuable privilege like the practice of law, for religious reasons, he will have to live on with a degraded status. Surely, this country has never contemplated the existence of a large group of "second-class citizens" who have done no criminal act and who are put on this low level because of their religion.

Finally, it is argued (Return, p. 26) that, since a lawyer must necessarily be a citizen, a native-born prospective lawyer must therefore fulfill all the prerequisites of naturalization including willingness to bear arms. By this argument, a Quaker should be disqualified for *every* occupation and office which is open only to citizens. He will be excluded, not only from the bar, but from the practice of medicine, election to legislatures and other public offices, all civil service positions, teaching in the public schools and many state universities, and employment in

factories and shipyards engaged on government contracts. He will be subjected to far more disabilities than the English Jews who aroused Macaulay's sympathetic eloquence, although he will still be a little better off than the Roman Catholics in Ireland in the eighteenth century.

We submit that it would be better to confine the naturalization cases to naturalization.

### **The attorney's oath of admission.**

The Justices of the Illinois Supreme Court do not appear to deny what the Record clearly demonstrates, that petitioner, if once admitted to the bar, would do the work of a lawyer faithfully and well. They assert, however, that he is unable to perform the very first act required of an Illinois attorney, namely, taking the oath of admission. This is the only justification advanced by them for their action, in their Return to the Rule to Show Cause. They say (Return, p. 6):

“if it be further supposed that the sole ground for refusing the petitioner admission to practice as an officer of the court was his profession of conscientious objection to military service, nevertheless such refusal could not be deemed arbitrary or unreasonable because all applicants for admission to the Illinois bar are required to take an oath . . . ; and the petitioner could not take such an oath in good faith

The statutory oath required of an attorney in Illinois is substantially in the following form:

“I do solemnly swear (or affirm . . .), that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability.” (Italics supplied.) 2 Jones Ill. Stat. § 9.04.

This oath contains no express promise to bear arms, and we do not see how such a promise can reasonably be implied from the wording. The promise to "support the Constitution" is much less indicative of armed combat than the naturalization oath involved in the *Macintosh* case, to "support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic . . ." (Italics supplied.) 8 U. S. C. § 735. The majority of this Court in the *Macintosh* case appear to have been considerably influenced in their decision by the presence of such words as "defend" and "enemies" in the promise, and to have regarded the alien's unwillingness to bear arms as a qualification of this statutory oath (283 U. S. 605, 618, 626). On the other hand, Mr. Chief Justice Hughes thought that even these words did not exclude a conscientious objector; that they could and should be interpreted so as not to impair religious beliefs. A fortiori the word "support" by itself does not imply willingness to bear arms and should not be interpreted to impose a civil disability upon petitioner.

Furthermore, the Illinois oath is an oath of office. The first portion should be construed in relation to its concluding promise to perform the duties of a lawyer. The "support" of the Constitution which is pledged is what is due from a good and honorable attorney at law. Mr. Chief Justice Hughes pointed out that such a view has always been taken of the oath required by Act of Congress from civil officers generally. (See 5 U. S. C. § 16.) Even though the federal oath of office contains the same promise to "defend the Constitution . . . against all enemies" as the naturalization oath, these general words have not been regarded as implying a promise by civil officers, "to bear arms notwithstanding religious or conscientious scruples or as requiring one to promise to put allegiance to temporal power above what is sincerely believed to be one's duty of obedience to God." He continued (283 U. S. at 630-632):

"It goes without saying that it was not the intention of the Congress in framing the oath to impose any religious test. When we consider the history of the struggle for religious liberty, the large number of citizens of our country, from the very beginning, who have been unwilling to sacrifice their religious convictions, and in particular, those who have been conscientiously opposed to war and who would not yield what they sincerely believed to be their allegiance to the will of God, I find it impossible to conclude that such persons are to be deemed disqualified for public office in this country because of the requirement of the oath which must be taken before they enter upon their duties. The terms of the promise 'to support and defend the Constitution of the United States against all enemies, foreign and domestic,' are not, I think, to be read as demanding any such result. There are other and most important methods of defense, even in time of war, apart from the personal bearing of arms. We have but to consider the defense given to our country in the late war, both in industry and in the field, by workers of all sorts, by engineers, nurses, doctors and chaplains, to realize that there is opportunity even at such a time for essential service in the activities of defense which do not require the overriding of such religious scruples. I think that the requirement of the oath of office should be read in the light of our regard from the beginning for freedom of conscience. While it has always been recognized that the supreme power of government may be exerted and disobedience to its commands may be punished, we know that with many of our worthy citizens it would be a most heart-searching question if they were asked whether they would promise to obey a law believed to be in conflict with religious duty. Many of their most honored exemplars in the past have been willing to suffer imprisonment or even death rather than to make such a promise. And we



also know, in particular, that a promise to engage in war by bearing arms, or thus to engage in a war believed to be unjust, would be contrary to the tenets of religious groups among our citizens who are of patriotic purpose and exemplary conduct. To conclude that the general oath of office is to be interpreted as disregarding the religious scruples of these citizens and as disqualifying them for office because they could not take the oath with such an interpretation would, I believe, be generally regarded as contrary not only to the specific intent of the Congress but as repugnant to the fundamental principle of representative government."

Although this language is in a dissenting opinion, we believe that it should be accepted as an authoritative statement that conscientious objectors to war are qualified to hold a federal civil office and to take the requisite oath. It is true that the majority opinion in the *Macintosh* case did not expressly concede this point. Mr. Justice Sutherland did not mention it, but he dwelt throughout his opinion upon the purpose of the naturalization oath and the undesirability of admitting aliens to citizenship unless they were willing to agree in advance to fight for their new country. We find no passage in his opinion indicating that native-born citizens should be denied the privilege of holding office for unwillingness to bear arms. So far as we can ascertain, the actual administration of the federal oath for civil office holders has always accorded with the passage quoted from Mr. Chief Justice Hughes. The latest example of this practice is a ruling of the Civil Service Commission in 1941, that the classification of a person by his draft board as a conscientious objector "is not a bar to his reinstatement or employment in the Federal service"; and that his duly approved claim of conscientious objection does not indicate such "mental reservation or purpose of evasion" as would make his taking the statutory oath of civil office an invalid act. (Departmental Circular No. 286—Nov. 8, 1941.)

If a person of petitioner's beliefs is able honestly to take this federal oath, he seems still more able to take the milder Illinois oath, which uses only the word "support". The Justices, however, insist on a much more drastic interpretation of the words "support . . . the Constitution of the State of Illinois . . ." They assert (Return, pp. 6-7) that petitioner could not take such an oath in good faith because a particular portion of this constitution authorizes the legislature to require compulsory military service in the militia from him under certain conditions, whereas the petitioner has not made any showing that he would render this service if it were required notwithstanding his conscientious objections.<sup>19</sup>

We make several replies to this contention. First, it rests on the fundamental assumption that one cannot honestly promise to support a constitution unless he is willing to pledge himself in advance to obey every single statute which may be enacted at any time in the future under any legislative power conferred by that constitution. This is a tremendous leap in the dark, especially as the Illinois oath exacts only support for "the Constitution of the State of Illinois" and not for its statutes. The broader federal oath of office to "support and defend the Constitution and

<sup>19</sup> A similar argument is made about the promise to "support" the Constitution of the United States, namely, that he does not aver willingness to obey some future selective service act omitting the recognition now given his religious beliefs by § 5 (g). We do not discuss this contention, because the scope of the oath of allegiance to the United States Constitution on the part of a state office holder or attorney should, we submit, be governed by federal decisions and practice. This portion of the oath seems intended to comply with Article VI of the United States Constitution requiring that "all . . . judicial officers, . . . of the several States, shall be bound by oath or affirmation to support this Constitution;" and so the scope of such a constitutional oath is a federal and not a state question. Its scope appears to be settled by the federal practice as described by Mr. Chief Justice Hughes in the *Macintosh* case.

laws" has never been so construed. This assumption of the Justices will have some extraordinary consequences if it be applied to every clause of the Illinois Constitution. Certainly there is no reason for limiting it to the militia clause except a dislike for conscientious objectors. Article IV, section 6 of the Illinois Constitution requires the General Assembly to "apportion the State every ten years." There has been no reapportionment since 1901. (See *Fergus v. Kinney*, 333 Ill. 437, 164 N. E. 665.) Therefore, members of the General Assembly have for several decades disregarded this provision of the state constitution. According to the reasoning of the Justices they are disqualified from reelection to the General Assembly or from holding any civil office in Illinois, inasmuch as they cannot take "in good faith" (Return, p. 6) the required constitutional oath "to support the Constitution of the State of Illinois." (Ill. Const. Art. IV, § 5.) Take one more example, Article IX, section 1, of the state constitution directs the general Assembly to provide revenue by levying a tax so that every person shall pay "in proportion to the value of his property"; and section 9 requires municipal taxes to be "uniform in respect to persons and property". An oath of any attorney or office holder, as the word "support" is construed by the Justices of the Illinois Supreme Court, requires intention to obey any statute enacted under these clauses of the constitution. Such a statute provides that real property shall be valued "at its fair cash value, estimated at the price it would bring at a fair, voluntary sale", and that personal property shall be similarly valued except stock in domestic corporations. Any assessor who knowingly values property below this standard is thereby disqualified to hold office in Illinois, and the taxpayer who cooperates in the under-valuation or who expects so to cooperate in the future would seem unable to take an oath for any public office in Illinois. If a very remote possibility of disobedience to a non-existent statute under the militia clause of the state constitution is sufficient to disqualify pe-

petitioner, then actual or highly probable violations of the apportionment clause or the tax clause and tax statutes should equally disqualify other persons from holding office or being admitted to the bar. There is nothing in the attorney's oath which specifically directs it toward the militia clause of the state constitution. No such impossibly high standard is imposed on applicants for admission to the bar generally or on the holders of public office in Illinois. We submit that the imposition of this standard on petitioner alone is both arbitrary and a plain penalty upon his religious beliefs.

Secondly, the alleged violation of the militia provisions of the state constitution is so improbable that it cannot be reasonably regarded as negating petitioner's honesty in swearing to support that constitution. The provisions on which the Justices rely are:

"The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, *exempted by the laws of the United States, or of this state.*" (Italics supplied.) *Illinois Const. Art XII § 1.*

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: Provided, such person shall pay an equivalent for such exemption." *Ibid § 6.*

Petitioner cannot *now* possibly disobey this part of the Illinois Constitution for many reasons. It merely authorizes a statute and the Illinois legislature has not compelled service in the militia since 1864. Petitioner's religious beliefs prevent his conscription in the militia in time of peace. He cannot be compelled to serve during this war because he is "exempted by the laws of the United States" an express exception in the state constitution, and also because he is subject to the orders of his draft board. Even if another war should occur and he is not then older than forty-

five, he cannot be forced into the militia unless Congress refuses to reenact section 5 (g) of the Selective Service Act and unless the imaginary Illinois statute also fails to exempt religious objectors. Finally, it is far from certain that every lawyer of military age not in federal service will be drafted into the militia, and petitioner may not be asked to serve.

Thus petitioner's alleged inability to swear in good faith to support the Illinois Constitution rests on a very peculiar process of reasoning. First, the Justices single out a few clauses which have lain idle for many years, which have no more connection with the duties of a lawyer than with those of a doctor, but which are known to create peculiar difficulties for a man with petitioner's religious beliefs. Then they supplement these constitutional clauses with a number of conditions contrary to fact and assume that petitioner is asked to answer the following hypothetical question:

- “(1) If there should be another war, and
- (2) if Congress did not then classify conscientious objectors as it does now, and
- (3) if you were not called into some federal service, and
- (4) if the Illinois legislature should for the first time in about a century pass a statute compelling citizens to serve in the militia, and
- (5) if this statute did not exempt men of your beliefs, and
- (6) if you still held the same beliefs, and
- (7) if you were not then older than forty-five, and
- (8) if you were then “able-bodied”, and
- (9) if your name were drawn for service in the Illinois militia, and
- (10) if the state draft board assigned you to some active duty, and



(11) if this duty involved work contrary to your religious beliefs,

we ask you, Mr. Summers, would you obey?"

Finally, although the Character Committee put no such question or indeed any question relating to the militia, the Justices infer that if he had been asked it, he would have answered "No". And against this imaginary "No", the character testimony of his teachers and officers and friends in the armed forces counts for absolutely nothing.

When the broad phrase "support . . . the Constitution" in a statute designed to meet a wholly laudable purpose is stretched like this as the chief justification for a serious impairment of religious liberty, we submit that the Justices' interpretation of the attorney's oath falls within the principle of *Cantwell v. Connecticut*, 310 U. S. 296, 309, as much as their interpretation of such broad phrases as "character and moral fitness" in the Rule of Court. The Justices of the Illinois Supreme Court are suppressing religious views "under the guise of conserving desirable conditions."

In *Herndon v. Lowry*, 301 U. S. 242, 255, 261-264, Mr. Justice Roberts condemned the construction of a statute which was so loose as not to furnish a sufficiently ascertainable standard of wrongful conduct and so broad as to include activities which created no "clear and present danger" of obstruction of a particular state function. In that case liberty of speech was limited and not liberty of religion, but much of his language applies *mutatis mutandis* to the case at bar. He said (pp. 263-264):

"The statute, as construed and applied, amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen his words would have some effect in the future conduct of others. No reasonably ascertainable standard of guilt is prescribed. So vague and indeterminate are the bounda-

ries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."

The Illinois attorney's oath is intended to assert the applicant's devotion to his duties as a member of the bar. We submit that it cannot be used to penalize religious beliefs which do not impair his performance of those duties, unless perhaps his beliefs are generally reprobated (as polygamy is). No strong public need is shown for denying the privilege of practicing law to petitioner and those who share his beliefs on the ground that these beliefs might many years hence under very unlikely conditions produce disobedience of a non-existent law which has no connection with their ability to use their legal knowledge and judgment on behalf of their clients or with their fidelity to clients and to the courts before whom they will appear. Where no clear and present danger threatens civil disabilities for religious reasons are unconstitutional; and it makes no difference whether they are imposed by flat prohibitions against members of a particular faith or by the subtler device of a test-oath which, either in terms or by authoritative interpretation, is repugnant to the tenets of that faith. If a rule of court expressly excluding duly qualified religious objectors from the bar be invalid, as we contend, then it is equally wrong to require lawyers to qualify themselves by an oath explicitly promising to bear arms. It is even worse for a state court to read such a promise into an oath which on its face pledges the taker to perform faithfully the duties of his office and profession.

This brings us to our last argument against the use of the statutory oath to keep out of the bar persons who hold an unpopular religious belief. To do so turns an entirely proper oath into a test oath, and test oaths are abhorrent to our law. As already shown, they were a favorite device for imposing civil disabilities on Roman Catholics and Dissenters and Jews in England and Ireland when our

Constitution was adopted. They have been repeatedly condemned by members of this Court.

Mr. Chief Justice Hughes said in *United States v. Macintosh*, 283 U. S. 605, 634-635:

"One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God. . . . And . . . freedom of conscience itself implies respect for an innate conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power. The attempt to exact such a promise, and thus to bind one's conscience by the taking of oaths or the submission to tests, has been the cause of many deplorable conflicts."

This language was in a dissenting opinion, but the same principle was enunciated by seven members of this Court in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. Mr. Justice Jackson for the Court said (pp. 631, 633):

"Here . . . we are dealing with a compulsion . . . to declare a belief. . . . It is now a commonplace that censorship or suppression of expression of opinion is

tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. . . ."

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Mr. Justice Black and Mr. Justice Douglas, concurring, said (p. 644):

"Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made by this Court. The duty is a solemn one, and in meeting it we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

"Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men."

Mr. Justice Murphy, concurring, said (pp. 645-646):

"The right of freedom of thought and of religion as guaranteed by the Constitution against State action

includes both the right to speak freely and the right to refrain from speaking at all, except insofar as essential operations of government may require it for the preservation of an orderly society,—as in the case of compulsion to give evidence in court. . . . Official compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what Jefferson characterized as the "severest contests in which I have ever been engaged."

Mr. Justice Frankfurter, although differing from these Justices as to the result of the particular case, agreed with them as to the principle now in question. He spoke (p. 663) of "the oath tests so odious in history. For the oath test was one of the instruments for suppressing heretical beliefs."

This Court has held that "liberty" of religion is protected by the Fourteenth Amendment against restrictions by the states which are forbidden to Congress. Thus far the decisions have read only the provisions of the First Amendment into religious freedom as thus safeguarded. We venture to think that the Fourteenth Amendment may also prevent the states from using an infringement on religious liberty which is forbidden to Congress by a different part of the Constitution, namely, the last clause of Article VI: "but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." This clause invalidates test oaths for federal officers. We submit that it is just as important for religious freedom that test oaths should be outlawed for state officers. Perhaps the broad language of the First Amendment suffices for such a purpose. If not, the more specific provisions of Article VI may be available. This aspect of religious liberty was thought to be so important by the Philadelphia Convention that it was the only safeguard against persecution which they inserted into the Constitution itself. Therefore, we submit that it should not be



ignored when "liberty" of religion in the Fourteenth Amendment is invoked against state action.

### National Defense.

The only public needs which could conceivably be served by the exclusion of a religious objector from the bar are the efficient administration of justice and national defense (including the protection of the State of Illinois from national enemies). Both are recognized as important purposes of government, but it is incumbent upon the Supreme Court of Illinois to convince this Court that either purpose is directly served by the denial of religious liberty. We have devoted much of our brief to showing that there is no close relation between fitness for the administration of justice and willingness to bear arms.

National defense does, of course, have a close connection with willingness to bear arms, but we fail to see its connection with the Justices' action in this case. Perhaps they think that the nation would be better defended in this war if petitioner were forced to serve in the army, but that matter is in other hands than theirs. It has been settled by Congress in section 5 (g) of the Selective Service Act and by his draft board. We can see how, in fact, petitioner's exclusion may tempt a few other religious objectors to forego their beliefs and be classified in I-A; but we are sure that the Justices of the Illinois Supreme Court will not advance such a justification for their action. Besides conflicting with the spirit, if not the letter, of the Congressional prohibition of bounties "to induce any person to . . . be inducted into the land or naval forces of the United States," (50 U. S. C. App. § 307) it would be a flagrant illustration of what Jefferson condemned in the Statute of Religious Toleration, bribing a man with worldly honors to change churches "by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion."

National defense in a possible future war is somewhat involved in the Justices' argument about the attorney's oath. Our reply has shown that their action in the case at bar has a very conjectural tendency to promote this supposed future need. When an inroad on religious liberty is urged for such a reason, we would point out, as the present Chief Justice declared in his dissenting opinion in the *Gobitis* case that there are "ways enough to secure the legitimate state-end without infringing the asserted immunity." At least, there should be a positive determination by Congress of a pressing need for drafting religious objectors into military service before this Court gives weight to such a justification of civil disabilities on a particular faith. Congress has taken quite a different position in section 5 (g) of the 1940 Act. We submit that this Court should reject any suggestion that the best way to save the country in a future war is to sacrifice religious freedom during this war.

### **Hamilton v. Regents.**

If *Hamilton v. Regents of the University of California*, 293 U. S. 245, be cited by the Supreme Court of Illinois we submit that it is not applicable to the facts now before this Court. Congress in 1862 had donated public lands to the States for the maintenance of colleges which should include military tactics in their teaching. This Act was long interpreted, perhaps erroneously,<sup>20</sup> to obligate the land-grant colleges to make military training a compulsory subject. The California legislature in 1868 established a state university, and expressly imposed such instruction in military tactics on all able-bodied male students in such manner as the Regents should prescribe. The Regents ordered all such students to take military training.

<sup>20</sup> The Attorney General, shortly before the decision, ruled that the Morrill Act did not require military training to be compulsory.

Participation in this training was contrary to the religious scruples of several Methodist students with beliefs resembling petitioner's. Their request for exemption was denied. This Court unanimously held that they were not constitutionally entitled to avoid the military courses, under the due process clause. If they sought the education offered cheaply by the State, they must take it on the State's terms. If they wished to preserve their religious beliefs inviolate, they must study elsewhere.

As representatives of the American Friends Service Committee, we regret that the Regents did not make some concessions to religious scruples, with legislative sanction if necessary, in order not to drive out of the university members of the historic peace churches and others sharing their opposition to war. We believe that a society of scholars, even more than an ordinary community, gains from the policy advocated by Mr. Justice Jackson:

"We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes." (319 U. S. 624, 641-642.)

In comparison with such an ideal, the exemption of a few students who would leave rather than take military training, seems a small matter. But these are considerations of wisdom, on which this Court was not free to pass.

In the *Hamilton* case religious liberty did squarely collide with the public interest in national military defense. General military training in the university did directly serve national military defense, whereas merely excluding a man from the bar has the barest relation to it. The desirability of widespread instruction in military tactics was declared by a long series of carefully considered legislative acts, by Congress and in California; no statute recognizes the need for the Justices' action. The California students were trying to upset the practice of seventy years in scores of land-grant colleges; old process is likely to be

due process. Also compulsory service in the militia had long been recognized. By contrast, petitioner has faithfully complied with the existing law and complains of an unprecedented ruling. The students were trying to get an education at the State's expense, but on their own unusual terms. Petitioner is asking for nothing except the opportunity to practice law on the usual terms. Finally, the students were not forced into willingness to bear arms; they had an option. They could preserve their religious convictions by beginning at another college in California or shifting to it after the denial of exemption; despite the greater expense they might somehow hope to enter their chosen careers. Petitioner has had no option. He had to go before this Character Committee and the highest court of his State. True, he might move to another State and trust that its bar will not be closed to religious objectors. How can he be certain? To adopt the language of Mr. Justice Douglas, speaking for this Court, conscientious objectors "moving from state to state would feel immediately the cumulative effect of such [rulings] as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type . . . is approved, a new device for the suppression of religious minorities will have been found." (*Murdock v. Pennsylvania*, 319 U. S. 105, 115.) Let us hope that there will still be a few liberal havens which will admit such men to pursue their profession, but religious freedom in the United States should surely mean more than the existence of some Holland or Geneva here and there among the forty-eight States. The possibility of exile is a poor remedy for persecution.

#### 4. Petitioner has been denied the equal protection of the laws.

This clause of the Fourteenth Amendment requires that a classification should be reasonable. When a state treats different persons differently, the distinction must

have a sensible basis. This is not likely to be true when persons are put into an unfavored class because of their religious beliefs. Thus the due process clause and the equal protection clause overlap in the case at bar. Other applicants of moral fitness are admitted to practice law, but petitioner despite his moral fitness is rejected because of his draft status and the religious convictions which led to that status. The lack of any connection between these facts and his performance of his duties as a lawyer makes the refusal to admit him to the bar an arbitrary denial of religious liberty and also a classification without any reasonable basis.

Such an overlapping of the two clauses of the Fourteenth Amendment is likely to occur. Mr. Justice Lamar said in *Smith v. Texas*, 233 U. S. 630, 636:

“Life, liberty, property and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labor his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords to those who are permitted to work.”

The Supreme Court of Illinois contends that the privilege of practicing law is not a “liberty” within the Fourteenth Amendment (Return to Rule to Show Cause, p. 23). We consider this contention unsound because the legal profession must be grouped with other professions where the reasonableness of the licensing power is concerned. Still, even if the practice of law be considered as altogether a public office and not at all an occupation, as asserted on the Return, that does not affect the questions of “liberty” of religion and equal protection of the laws. For example, if one of our states should adopt a constitution forbidding its highest judge to be a Roman Catholic, as is done in



England by Act of Parliament,<sup>21</sup> such a discriminatory provision in the United States of America would seem invalid under the Fourteenth Amendment. Although the opportunity to hold a political office is not in itself "liberty or property" within the due process clause, *Snowden v. Hughes*, 321 U. S. 1; *Taylor v. Beckham*, 178 U. S. 548, 573-578, the exclusion of members of one particular faith from that opportunity would probably be considered to deny "liberty" of religion under the same clause. Also the classification on religious grounds would seem to deny to Roman Catholics "the equal protection of the laws."

This Court has applied the equal protection clause to political rights in at least two cases. In *Nixon v. Herndon*, 273 U. S. 536, and *Nixon v. Condon*, 286 U. S. 73, this clause was held to be violated because a classification of voters for public officers was based on color. The classification of persons eligible for office according to color seems equally objectionable. The same unreasonableness extends in principle to the case at bar, where eligibility to become an officer of the court is made to depend on religious beliefs. It is true that this Court has not hitherto reviewed a classification according to religion under the equal protection clause, but a New Jersey court has done so. (See *Morgan v. Civil Service Commission*, 131 N. J. L. 411, 414-415.)

We find an important analogy to the case at bar in *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337, where this Court held it a denial of equal protection of the laws for a state to exclude a person from a state law school because he was a Negro without providing other law schools of comparable standards for Negroes. When this clause protects the right of the member of a minority group to prepare himself for the bar, we submit that it should also assure his admission to the bar of his state if he meets all the proper qualifications. It would indeed be a barren victory if the Constitution merely enables a man to fit himself to become a lawyer and then permits the state to deny him the opportunity to use the legal knowledge which he

<sup>21</sup> 10 Geo. 4, c. 7, § 12 (1829) (the Lord Chancellor).

has acquired. Equality in admission to the bar is just as important as equality in admission to a state law school. The two naturally belong together. And discrimination against an applicant to the bar because of his religion is as bad as discrimination against him because of his color.

**Conclusion as to the unconstitutional infringement of religious freedom.**

The civil disability imposed upon petitioner because of his religion and his consequent draft status denies to the petitioner liberty of religion without any reasonable relation to any strong public interest and denies him equal protection of the laws. It is true that as yet only one civil disability has been imposed by the State of Illinois upon petitioner and presumably upon men of his religious beliefs. The consequences of even this single disability are far reaching. If he cannot be a lawyer, he cannot be a judge or occupy many important public offices and private positions which are open only to members of the bar. He is deprived of the practical opportunity which the bar offers as a gateway to public office. Other religious objectors who are already lawyers will perhaps be disbarred on the ground that they are morally unfit to remain in the profession or that they obtained admission under false pretenses and by false swearing. The same reasons which are alleged to make petitioner a bad citizen would also make them bad citizens.

What is still more serious, the reasons which the Justices urge in support of their action would apply equally well to the exclusion of religious objectors from many other offices and occupations. If this Court should give its sanction to the argument that men of this faith are bad citizens and unfit to engage in the administration of justice or to the argument that penalizing such men somehow promotes national defense, these same arguments may easily be used to close door after door to religious objectors. State legislatures may be persuaded that these men ought not to become legislators and participate in the framing of laws

which they are unfit to administer; that they are ineligible as governors, who head state militias; that they ought not to be doctors, because doctors are called into the army much more often than lawyers; that they should not be officers or employees in any corporation which might conceivably be needed for war work; and that as bad citizens they must not be allowed to teach in public schools or state universities. Already a man with petitioner's religious beliefs has been dismissed from his position in a public school in Florida after ten years of service as unfit to teach science. (*State ex rel. Schweitzer v. Turner*, 19 So. 2d 839.) This Florida case forcibly demonstrates the possible spread of civil disabilities in the United States. We submit that the proper time to stop this religious intolerance is now. As this Court declared through Mr. Justice Jackson in the *Barnette* case:

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings." (319 U. S. 624, 641.)

## II.

**Is the exclusion from the state bar of a duly classified conscientious objector, who has been assigned by his draft board to "work of national importance under civilian direction," an invalid interference with the purpose of Congress as embodied in the Selective Service Act of 1940?**

Our argument under this second main heading is based, not on the Fourteenth Amendment, but on the provisions of section 5 (g) of the Selective Service Act of 1940, which (by Article VI of the Constitution) is "the supreme law of the land" and binding on state judges in Illinois.

The essence of this argument is that the Supreme Court of Illinois, by imposing a heavy civil disability on petitioner because of his being a duly classified religious conscientious objector, has seriously interfered with the successful opera-

tion of a carefully planned Congressional scheme for solving an important and difficult national problem.

Briefly stated, our position is this: the proper relationship between religious conscientious objectors and other citizens in time of war involves a reconciliation between national defense and religious freedom. Both are national interests of the highest importance. The preservation of religious freedom was the main purpose of many men in coming to our shores. The historic peace churches had an honorable share in the settlement and life of this country. Our lawgivers, ever mindful of these facts, have given frequent attention to this problem, and there has been throughout our history a widespread reluctance to interfere with conscience for the sake of defense. The desire to work out a wise adjustment of these conflicting interests was realized locally at an early date by the militia laws of many states; but although the same desire was displayed in debates in the First Congress, a federal solution was long sought in vain. The successive conscription acts from 1812 to 1917 showed progress toward a national policy; but the actual operation of Selective Service in the last war was unsatisfactory—a fact repeatedly called to the attention of the Congressional Committees during hearings on the present law.

In the Selective Service Act of 1940, Congress took a great deal of care in working out a solution of this difficult problem. The history of the conscientious objector clause in committee is very impressive. Two aspects of the problem were brought out by abundant testimony: First, the need of giving a wider scope to religious freedom by recognizing the beliefs of individuals like petitioner outside the historic peace churches. Second, the desirability of making affirmative use of religious objectors in the service of their country. The Committees were shown that most of these men have a strong sense of obligation to work for the public good and so constitute a valuable element in the nation whose potentialities might be utilized in civilian activities instead of being ignored; or wasted in clashes with mili-

tary discipline. The Committees had before them a careful statement of the English experience in drawing conscientious objectors into the national life in a crisis by assigning them to many essential jobs which did not conflict with their beliefs. While the English system was unfortunately not adopted, a conscientious objector clause was drafted in consultation with representatives of the War Department and laid before the Committee. This clause substantially became part of the bill as reported to the two Houses and with some changes in machinery was enacted as Section 5 (g) of the Selective Training and Service Act of 1940, the pertinent provisions of which are as follows:—

“Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction.” (54 Stat. 887, 50 U. S. C. App. § 305 (g).)

In this section Congress establishes a comprehensive scheme for the solution of “the not easy problem of the conscientious objector.” It gives a greater protection for individual beliefs than any previous Act, but its most significant feature is its recognition of conscientious objectors as directly useful to the nation. They are not merely kept out of the armed services and cast aside like lunatics or criminals. They remain part of the great group of young men engaged in national service under the Act. Section 5



(g) refers to three types of national service: (1) combatant training and service; (2) non-combatant service; (3) work of national importance under civilian direction. A drafted man is to be assigned by his board to either of these three kinds of service according to his religious beliefs. The men assigned to group (3) are as much part of the Selective Service System as those in the armed forces. Thus the comprehensive scheme of Congress not only preserves religious freedom, but also brings into the service of the nation a large number of sincere and able, young men capable of performing important tasks. It gears conscientious objectors into the national life. It promotes national unity in war and in peace by avoiding the bitter resentments inevitably aroused by intolerance, and by enlisting the wide religious and intellectual diversities of our citizens in the complex enterprise of promoting the national welfare. Congress has recognized the truth long asserted by the Religious Society of Friends that military service is not the only way in which a man can devote his life to his country.

The Justices' action in the case at bar breaks into this carefully planned solution of the difficult problem of reconciling religious freedom with national defense. They are penalizing a man for performing one of the three types of national service set up by Congress. Petitioner's religious beliefs are evaluated by Congress as fitting him for "work of national importance;" and by the Justices as conclusive evidence of moral unfitness. In this conflict the determination of Congress must be supreme. The real issue of fact on which the Supreme Court of Illinois has passed is the worth of a conscientious objector as a citizen. Since the appraisal of his worth concerns national defense and religious freedom, it belongs to Congress and Congress has spoken. Congress has handled the matter by a comprehensive scheme.

We submit that this Court should not permit the Supreme Court of Illinois to interfere with the operation of

the Congressional scheme or to substitute its judgment of petitioner's value as a citizen for the judgment of Congress.

We call attention to the magnitude of the national concern for defense and religious freedom embodied in the congressional regulation of religious objectors. It is inconsistent with the will of Congress for a state to penalize petitioner for lawful conduct in compliance with such regulation. His religious beliefs, which have been singled out by Congress for special provision and treatment, cannot properly be regarded by a state court as evidence of bad character.

We do not wish to burden this Court with details of the hearings before the House and Senate Committees on Military Affairs during the consideration of the Selective Service Bill of 1940, but if there be doubt as to our contention that, in making their drastic revision of the original Burke-Wadsworth Bill (S. 4164 and H. R. 10132), these Committees were vitally concerned with religious freedom as well as with military victory, we hope that this Court will review the reports (76th Congress, 3rd Session, House Reports Nos. 2903, 2937, 2947) and the testimony in regard to the problem of the conscientious objectors, particularly that of Dr. Harry Emerson Fosdick, Professor Beale, and Raymond Wilson (Senate Hearings, pp. 308-324; House Hearings pp. 184-193, 204-211, 323-344).

In holding that the Federal Alien Registration Act of 1940 invalidated a prior state act covering the same subject, Mr. Justice Black, speaking for this Court, said:

"Where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations."

*Hines v. Davidowitz*, 312 U. S. 52, 66-67.

See also *Cloverleaf Butter Co. v. Patterson*, 315 U. S. 148;

*Terral v. Burke Construction Co.*, 257 U. S. 529.

We submit that the same reasoning applies in the case at bar and that the Selective Service Act of 1940 prevents a state from refusing to admit to its bar a fully qualified citizen merely because he has been classified as a conscientious objector in Class IV-E.

### Conclusion.

We therefore submit that:

- (1) the religious freedom of petitioner has been unconstitutionally infringed by the rejection of his application for admission to the bar solely because he is a conscientious objector to war on religious grounds, and
- (2) the exclusion of petitioner from the bar of Illinois under these circumstances constitutes an invalid interference with the purpose of Congress as embodied in the Selective Training and Service Act of 1940.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES.

No. 205.—OCTOBER TERM, 1944.

In re Clyde Wilson Summers,  
Petitioner.

On Writ of Certiorari to the  
Supreme Court of the State  
of Illinois.

[June 11, 1945.]

Mr. Justice REED delivered the opinion of the Court.

Petitioner sought a writ of certiorari from this Court under Section 237(b) of the Judicial Code to review the action of the Supreme Court of Illinois in denying petitioner's prayer for admission to the practice of law in that state. It was alleged that the denial was "on the sole ground that he is a conscientious objector to war" or to phrase petitioner's contention slightly differently "because of his conscientious scruples against participation in war." Petitioner challenges here the right of the Supreme Court to exclude him from the bar under the due process clause of the Fourteenth Amendment to the Constitution of the United States which secured to him protection against state action in violation of the principles of the First Amendment.<sup>1</sup> Because of the importance of the tendered issue in the domain of civil rights, we granted certiorari.<sup>2</sup> — U. S. —

Since the proceedings were not treated as judicial by the Supreme Court of Illinois, the record is not in the customary form. It shows accurately, however, the steps by which the issue was

<sup>1</sup> Fourteenth Amendment:

nor shall any State deprive any person of life, liberty, or property, without due process of law;

First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Cf. Board of Education v. Barnette, 319 U. S. 624, 639.

<sup>2</sup> The petition for certiorari was not accompanied by a certified record. Rule 38(1). It alleged an inability to obtain a record from the Clerk of the Supreme Court of Illinois because the documents were not in that official's custody. See note 8, *infra*. No opposing brief was filed. After the expiration of the time for opposing briefs, rule 38(3), a rule issued "returnable within 30 days, requiring the Supreme Court of Illinois to show cause why the record in this proceeding should not be certified to this Court and also why the petition for writ of certiorari herein should not be granted." Journal, Supreme Court of the United States, October Term, 1944, p. 6. A return was duly made by the Chief Justice and the Associate Justices of the Supreme Court of Illinois which stated the position of the justices on the certification of the supposed and alleged record and their opposition to the granting of the certiorari. On consideration our writ of certiorari issued, directed to the Honorable, the Judges of the Supreme Court of Illinois, commanding that

developed and the action of the Supreme Court on the prayer for admission to the practice of law in the State of Illinois. From the record it appears that Clyde Wilson Summers has complied with all prerequisites for admission to the bar of Illinois except that he has not obtained the certificate of the Committee on Character and Fitness. Cf. Illinois Revised Statutes, 1943, c. 110, § 259.58. No report appears in the record from the Committee. An unofficial letter from the Secretary gives his personal views.<sup>3</sup> A petition was filed in the Supreme Court on August 2, 1943, which alleged that petitioner was informed in January, 1943, that the Committee declined to sign a favorable certificate. The petition set out that the sole reason for the Committee's refusal was that petitioner was a conscientious objector to war, and averred that such reason did not justify his exclusion because of the due process clause of the Fourteenth Amendment. The denial of the petition for admission is informal. It consists of a letter of September 20, 1943, to the Secretary of the Committee which is set out below,<sup>4</sup> a letter of the same date to Mr. Summers and a third letter of March 22, 1944, to Mr. Summers' attorney on petition for rehearing. These latter two letters are set out in note 8.

The answer of the Justices to these allegations does not appear in the record which was transmitted from the Supreme Court of Illinois to this Court but in their return to the rule to show cause

"the record and/or papers and proceedings" be sent to this Court for review." Journal, Supreme Court of the United States, October Term, 1944, p. 93. The papers comprising the proceedings before the Supreme Court of Illinois were certified to us by the Clerk of that court.

<sup>3</sup> In part it reads:

"I think the record establishes that you are a conscientious objector,—also that your philosophical beliefs go further. You eschew the use of force regardless of circumstances but the law which you profess to embrace and which you teach and would practice is not an abstraction observed through mutual respect. It is real. It is the result of experience of man in an imperfect world, necessary we believe to restrain the strong and protect the weak. It recognizes the right even of the individual to use force under certain circumstances and commands the use of force to obtain its observance.

"I do not argue against your religious beliefs or your philosophy of non-violence. My point is merely that your position seems inconsistent with the obligation of an attorney at law."

<sup>4</sup> "This Court has an elaborate petition filed by Francis Heisler, an attorney of 77 West Washington Street, Chicago, Illinois, on behalf of Clyde Wilson Summers.

"The substance of the petition is that the Board should overrule the action of the Committee on Character and Fitness, in which the Committee refused to give him a certificate because he is a conscientious objector, and for that reason refused to register or participate in the present national emergency.

"I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

"Yours very truly, (Signed) June C. Smith, Chief Justice."



why certiorari should not be granted. The answer is two-fold: First, that the proceedings were not a matter of judicial cognizance in Illinois and that no case or controversy exists in this Court under Article III of the Federal Constitution; second, that assuming the sole ground for refusing to petitioner admission to practice was his profession of conscientious objection to military service, such refusal did not violate the Fourteenth Amendment because the requirement for applicants for admission to the bar to take an oath to support the Constitution of Illinois could not be met. In view of his religious affirmations, petitioner could not agree, freely, to serve in the Illinois militia. Therefore petitioner was not barred because of his religion but because he could not in good faith take the prescribed oath, even though he might be willing to do so. We turn to consideration of the Justices' contentions.

*Case or Controversy.* The return of the Chief Justice and the Associate Justices states that the correspondence and communications of petitioner with the Justices were not spread upon the records of the Supreme Court of Illinois and that under the law of Illinois this petition for admission to the bar does not constitute a case or controversy or a judicial proceeding but is a mere application for appointment as an officer of the court.<sup>5</sup> We of course accept this authoritative commentary upon the law of Illinois as establishing for that state the non-judicial character of an application for admission to the bar.<sup>6</sup> We take it that the law of Illinois treats the action of the Supreme Court on this petition as a ministerial act which is performed by virtue of the judicial power, such as the appointment of a clerk or bailiff or the specification of the requirements of eligibility or the course of study for applicants for admission to the bar, rather than a judicial proceeding.

For the purpose of determining whether the action of the Supreme Court of Illinois in denying Summers' petition for an order

<sup>5</sup>Other courts reason to the contrary result. *Ex parte Secombe*, 19 How. 9, 15; *Ex parte Garland*, 4 Wall. 333; *Randall v. Brigham*, 7 Wall. 523, 535; *In the Matter of the Application of Henry W. Cooper*, 22 N. Y. 67; *Ex parte Gashin*, 128 Miss. 224, 232.

<sup>6</sup>Illinois considers that the power and jurisdiction of its Supreme Court with respect to the admission of attorneys are inherent in the judiciary under the constitution of the state, which provides, Article III, for the traditional distribution of the powers of government. *Smith Hurd Illinois Anno. Statutes*, Constitution, p. 394; *In re Day*, 181 Ill. 73, 82. Attorneys are officers of the court, answerable to it for their conduct. *People v. Peoples Stock Yards State Bank*, 344 Ill. 462, 470. The act of admission is an exercise of judicial power, *id.*, 470, a judgment. *In re Day*, at p. 97, even though it is not considered a judicial proceeding. In the exercise of its judicial power over the

for admission to practice law in Illinois is a judgment in a judicial proceeding which involves a case or controversy reviewable in this Court under Article III, Sec. 2, Cl. 1, of the Constitution of the United States,<sup>7</sup> we must for ourselves appraise the circumstances of the refusal. *Nashville, C. & St. L. Ry. v. Wallace*, 288 U. S. 249, 259. Cf. *Bridges v. California*, 314 U. S. 252, 259-60; *Nixon v. Condon*, 286 U. S. 73, 88; *First National Bank v. Hartford*, 273 U. S. 548, 552; *Truax v. Corrigan*, 257 U. S. 312, 324.

A case arises, within the meaning of the Constitution, when any question respecting the Constitution, treaties or laws of the United States has assumed "such a form that the judicial power is capable of acting on it." *Osborn v. Bank*, 9 Wheat., 738, 819. The Court was then considering the power of the bank to sue in the federal courts. A declaration on rights as they stand must be sought, not on rights which may arise in the future. *Prentiss v. Atlantic Coast Line*, 211 U. S. 210, 226, and there must be an actual controversy over an issue, not a desire for an abstract declaration of the law. *Muskrat v. United States*, 219 U. S. 346, 361; *Fairchild v. Hughes*, 258 U. S. 126, 129. The form of the proceeding is not significant. It is the nature and effect which is controlling. *Nashville, C. & St. L. Ry. v. Wallace*, 288 U. S. 249, 259.

The brief for the Justices raises the question as to who are the adversary parties. The petition in the state court was entitled, "Clyde Wilson Summers, Petitioner, v. Committee on Character and Fitness for Third Appellate District, Respondent." The prayer sought relief against those named as respondents. The record does not show that any process issued or that any appearance was made. Our rule on the petition for certiorari required the Supreme Court of Illinois to show cause why a record should not be certified and the writ of certiorari granted. The return

bar, the Supreme Court of Illinois has adopted rules for admission to practice before the courts of that state which permit the admission by the Supreme Court after satisfactory examination by the Board of Law Examiners which includes a certification by a Committee on Character and Fitness as to the applicant's character and moral fitness. Illinois Revised Statutes 1943, c. 110, § 259.58.

<sup>7</sup>Constitution, Art. III, Sec. 2, cl. 1: "The judicial Power shall extend to all Cases, in Law and Equity; arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

was by the Justices, not by the Court. The Supreme Court of Illinois, however, concluded that the "report of the Committee on Character and Fitness should be sustained." Thus it considered the petition on its merits. While no entry was placed by the Clerk in the file, on a docket, or in a judgment roll, the Court took cognizance of the petition and passed an order which is validated by the signature of the presiding officer.<sup>8</sup> Where relief is thus sought in a State court against the action of a committee, appointed to advise the court, and the court takes cognizance of the complaint without requiring the appearance of the committee or its members, we think the consideration of the petition by the Supreme Court, the body which has authority itself by its own act to give the relief sought, makes the proceeding adversary in the sense of a true case or controversy.

A claim of a present right to admission to the bar of a state and a denial of that right is a controversy. When the claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewed under Article III of

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<sup>8</sup> The act of adjudging to which we have referred is contained in a letter addressed to petitioner, which reads as follows:

"Your petition to be admitted to the bar, notwithstanding the unfavorable report of the Committee on Character and Fitness for the Third Appellate Court District, has received the consideration of the Court.

"I am directed to advise you that the Court is of the opinion that the report of the Committee on Character and Fitness should be sustained.

"Yours very truly (Signed) June C. Smith, Chief Justice."

The letter was certified by the Clerk of the Supreme Court of Illinois under its seal as "filed in this office \_\_\_\_\_ in a certain cause entitled in this Court, Non Record No. 462. In Re Clyde Wilson Summers."

Later another letter was written in regard to the admission which reads as follows:

"March 22, 1944.

"Mr. Francis Heisler, Attorney at Law, 77 West Washington Street,  
Suite 1324, Chicago 2, Illinois.

"In re: Clyde Wilson Summers.

"Dear Sir:

"Your petition on behalf of Clyde Wilson Summers to reconsider the prior action of the Court sustaining the report of the Committee on Character and Fitness for the Third Appellate Court District, has had the consideration of the Court.

"I am directed to advise you that the Court declines to further consider its former action in this matter.

"Yours very truly, June C. Smith, Chief Justice."

By stipulation of petitioner and the Justices, the Clerk prepared a supplemental record in this cause which includes the following: (1) a transcript of the proceedings before the Character Committee; (2) the letter of March 22, 1944; (3) a certificate that the transcript is the original and the letter a document of the Supreme Court of Illinois.

the Constitution when federal questions are raised and proper steps taken to that end, in this Court.\*

*Disqualification Under Illinois Constitution.* The Justices justify their refusal to admit petitioner to practice before the courts of Illinois on the ground of petitioner's inability to take in good faith the required oath to support the Constitution of Illinois. His inability to take such an oath, the justices submit, shows that the Committee on Character and Fitness properly refused to certify to his moral character and moral fitness to be an officer of the Court, charged with the administration of justice under the Illinois law. His good citizenship, they think, judged by the standards required for practicing law in Illinois, is not satisfactorily shown.<sup>10</sup> A conscientious belief in non-violence to the extent that the believer will not use force to prevent wrong, no matter how aggravated, and so cannot swear in good faith to support the Illinois Constitution, the Justices contend, must disqualify such a believer for admission.

Petitioner appraises the denial of admission from the viewpoint of a religionist. He said in his petition:

"The so-called 'misconduct' for which petitioner could be reproached for is his taking the New Testament too seriously. Instead of merely reading or preaching the Sermon on the Mount, he tries to practice it. The only fault of the petitioner consists in his attempt to act as a good Christian in accordance with his interpretation of the Bible, and according to the dictates of his

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\* In *Bradwell v. The State*, 16 Wall. 130, this Court took cognizance of a writ of error to an order of the Supreme Court of Illinois which denied a motion of Mrs. Bradwell for admission to the bar of Illinois. The proceeding was entitled by the Supreme Court of Illinois, "In the matter of the application of Mrs. Myra Bradwell for a license to practice as an attorney-at-law." There was an opinion. A writ of error under the Illinois title was issued to bring up the case. The objection to Mrs. Bradwell's admission was on the ground of her sex. As no question was raised as to the jurisdiction of this Court under Article III of the Constitution, the case is of little, if any, value as a precedent on that point. *Arant v. Lane*, 245 U. S. 166, 170; *United States v. More*, 4 Cranch 159, 172.

<sup>10</sup> Section IX (3) of the Rules for Admission to the Bar reads as follows:

"Before admission to the Bar, each applicant shall be passed upon by the Committee in his district as to his character and moral fitness. He shall furnish the Committee with an affidavit in such form as the Board of Law Examiners shall prescribe concerning his history and environments, together with the affidavits of at least three reputable persons personally acquainted with him residing in the county in which the applicant resides, each testifying that the applicant is known to the affiant to be of good moral character and general fitness to practice law, setting forth in detail the facts upon which such knowledge is based. Each applicant shall appear before the Committee of his district or some member thereof and shall furnish the Committee such evidence of his moral character and good citizenship as in the opinion of the Committee would justify his admission to the Bar." Ill. Rev. Stat. 1943, c. 110, § 259.58.

conscience. We respectfully submit that the profession of law does not shut its gates to persons who have qualified in all other respects, even when they follow in the footsteps of that Great Teacher of mankind who delivered the Sermon on the Mount. We respectfully submit that under our Constitutional guarantees even good Christians who have met all the requirements for the admission to the bar may be admitted to practice law.

Thus a court created to administer the laws of Illinois, as it understands them and charged particularly with the protection of justice in the courts of Illinois through supervision of admissions to the bar found itself faced with the dilemma of excluding an applicant whom it deemed disqualified for the responsibilities of the profession of law or of admitting the applicant because of its deeply rooted tradition in freedom of belief. The responsibility for choice as to the personnel of its bar rests with Illinois. Only a decision which violated a federal right secured by the Fourteenth Amendment would authorize our intervention. It is said that the action of the Supreme Court of Illinois is contrary to the principles of that portion of the First Amendment which guarantees the free exercise of religion. Of course, under our Constitutional system, men could not be excluded from the practice of law, or indeed from following any other calling, simply because they belong to any of our religious groups, whether Protestant, Catholic, Quaker or Jewish, assuming it conceivable that any state of the Union would draw such a religious line. We cannot say that any such purpose to discriminate motivated the action of the Illinois Supreme Court.

The sincerity of petitioner's beliefs are not questioned. He has been classified as a conscientious objector under the Selective Training and Service Act of 1940, 54 Stat. 885, as amended. Without detailing petitioner's testimony before the Committee or his subsequent statements in the record, his position may be compendiously stated as one of non-violence. Petitioner will not serve in the armed forces. While he recognizes a difference between the military and police forces, he would not act in the latter to coerce threatened violations. Petitioner would not use force to meet aggressions against himself or his family, no matter how aggravated or whether or not carrying a danger of bodily harm to himself or others. He is a believer in passive resistance. We need to consider only his attitude toward service in the armed forces.

Illinois has constitutional provisions which require service in



the militia in time of war of men of petitioner's age group.<sup>11</sup> The return of the Justices alleges that petitioner has not made any showing that he would serve notwithstanding his conscientious objections. This allegation is undenied in the record and unchallenged by brief. We accept the allegation as to unwillingness to serve in the militia as established. While under Section 5(g) of the Selective Training and Service Act, *supra*, conscientious objectors to participation in war in any form now are permitted to do non-war work of national importance, this is by grace of Congressional recognition of their beliefs. *Hamilton v. Regents*, 293 U. S. 245, 261-65, and cases cited. The Act may be repealed. No similar exemption during war exists under Illinois law. The *Hamilton* decision was made in 1934, in time of peace.<sup>12</sup> This decision as to the powers of the state government over military training is applicable to the power of Illinois to require military service from her citizens.

The United States does not admit to citizenship the alien who refuses to pledge military service. *United States v. Schwimmer*, 279 U. S. 644; *United States v. Macintosh*, 283 U. S. 605. Even the powerful dissents which emphasized the deep cleavage in this Court on the issue of admission to citizenship did not challenge the right of Congress to require military service from every able-bodied man. 279 U. S. at 653; 283 U. S. at 632. It is impossible for us to conclude that the insistence of Illinois that an officer who is charged with the administration of justice must take an oath to support the Constitution of Illinois and Illinois' interpretation of that oath to require a willingness to perform military service

<sup>11</sup> "The militia of the state of Illinois shall consist of all able-bodied male persons resident in the state, between the ages of eighteen and forty-five, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this state." (Constitution of Illinois, Art. XII, Sec. 1, Ill. Rev. Stat. 1943.)

"No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace: *Provided*, such person shall pay an equivalent for such exemption." (Constitution of Illinois, Art. XII, Sec. 6, Ill. Rev. Stat. 1943.)

<sup>12</sup> California imposed instruction in military tactics on male students in the University of California. Some students sought exemption from this training on the ground that such training was inconsistent with their religious beliefs. This Court denied them any such exemption based on the due process clause of the federal Constitution. The opinion states, at pp. 262-63:

"Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength, to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. *Selective Draft Law Cases, supra*, p. 378; *Mason v. Happersett*, 21 Wall. 162, 166."

violates the principles of religious freedom which the Fourteenth Amendment secures against state action, when a like interpretation of a similar oath as to the Federal Constitution bars an alien from national citizenship.<sup>13</sup>

*Affirmed.*

<sup>13</sup> *United States v. Macintosh*, 283 U. S. 605, 625-26.

"If the attitude of this claimant, as shown by his statements and the inferences properly to be deduced from them, be held immaterial to the question of his fitness for admission to citizenship, where shall the line be drawn? Upon what ground of distinction may we hereafter reject another applicant who shall express his willingness to respect any particular principle of the Constitution or obey any future statute only upon the condition that he shall entertain the opinion that it is morally justified? The applicant's attitude, in effect, is a refusal to take the oath of allegiance except in an altered form. The qualifications upon which he insists, it is true, are made by parol and not by way of written amendment to the oath; but the substance is the same."

**Mr. Justice BLACK, dissenting.**

The State of Illinois has denied the petitioner the right to practice his profession and to earn his living as a lawyer. It has denied him a license on the ground that his present religious beliefs disqualify him for membership in the legal profession. The question is, therefore, whether a state which requires a license as a prerequisite to practicing law can deny an applicant a license solely because of his deeply-rooted religious convictions. The fact that petitioner measures up to every other requirement for admission to the Bar set by the State demonstrates beyond doubt that the only reason for his rejection was his religious beliefs.

The state does not deny that petitioner possesses the following qualifications:

He is honest, moral, and intelligent, has had a college and a law school education. He has been a law professor and fully measures up to the high standards of legal knowledge Illinois has set as a prerequisite to admission to practice law in that State. He has never been convicted for, or charged with, a violation of law. That he would serve his clients faithfully and efficiently if admitted to practice is not denied. His ideals of what a lawyer should be indicate that his activities would not reflect discredit upon the bar, that he would strive to make the legal system a more effective instrument of justice. Because he thinks that "Lawsuits do not bring love and brotherliness—just create antagonisms, he would, as a lawyer, exert himself to adjust controversies out of court, but would vigorously press his client's cause in court if

efforts to adjust failed. Explaining to his examiners some of the reasons why he wanted to be a lawyer, he told them; "I think there is a lot of work to be done in the law. . . . I think the law has a place to see to it that every man has a chance to eat and a chance to live equally. I think the law has a place where people can go and get justice done for themselves without paying too much, for the bulk of people that are too poor." No one contends that such a vision of the law in action is either illegal or reprehensible. The petitioner's disqualifying religious beliefs stem chiefly from a study of the New Testament and a literal acceptance of the teachings of Christ as he understands them. Those beliefs are these:

He is opposed to the use of force for either offensive or defensive purposes. The taking of human life under any circumstances he believes to be against the Law of God and contrary to the best interests of man. He would if he could, he told his examiners, obey to the letter these precepts of Christ: "Love your Enemies. Do good to those that hate you. Even though your enemy strike you on your right cheek, turn to him your left cheek also." The record of his evidence before us bears convincing marks of the deep sincerity of his convictions, and counsel for Illinois with commendable candor does not question the genuineness of his professions.

I cannot believe that a State statute would be consistent with our constitutional guarantee of freedom of religion if it specifically denied the right to practice law to all members of one of our great religious groups, Protestant, Catholic, or Jewish. Yet the Quakers have had a long and honorable part in the growth of our nation, and an amicus curiae brief filed in their behalf informs us that under the test applied to this petitioner, not one of them could qualify for the bar in Illinois. And it is obvious that the same disqualification would exist as to every conscientious objector to the use of force, even though the Congress of the United States should continue its practice of absolving them from military service. The conclusion seems to me inescapable that if Illinois

1 The quotations are the petitioner's paraphrase of the King James translation of Verses 38, 39 and 44 of St. Matthew, Chapter 5, which read as follows:

"Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth:

"But I say unto you, That ye resist not evil; but whosoever shall smite thee on thy right cheek, turn to him the other also.

"But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you;

*It true to the tenets of their faith*

can bar this petitioner from the practice of law it can bar every person from every public occupation solely because he believes in non-resistance rather than in force. For a lawyer is no more subject to call for military duty than a plumber, a highway worker, a Secretary of State, or a prison chaplain.

It may be, as many people think, that Christ's Gospel of love and submission is not suited to a world in which men still fight and kill one another. But I am not ready to say that a mere profession of belief in that Gospel is a sufficient reason to keep otherwise well qualified men out of the legal profession, or to drive law-abiding lawyers of that belief out of the profession, which would be the next logical development.

Nor am I willing to say that such a belief can be penalized through the circuitous method of prescribing an oath, and then barring an applicant on the ground that his present belief might later prompt him to do or refrain from doing something that might violate that oath. Test oaths, designed to impose civil disabilities upon men for their beliefs rather than for unlawful conduct, were an abomination to the founders of this nation. This feeling was made manifest in Article VI of the Constitution which provides that "no religious test shall ever be required as a Qualification to any Office or public Trust in the United States." *Cummings v. The State of Missouri*, 4 Wall. 277; *Ex parte Garland*, 4 Wall. 333.

The state's denial of petitioner's application to practice law resolves itself into a holding that it is lawfully required that all lawyers take an oath to support the state constitution and that petitioner's religious convictions against the use of force make it impossible for him to observe that oath. The petitioner denies this and is willing to take the oath. The particular constitutional provision involved authorizes the legislature to draft Illinois citizens from 18 to 45 years of age for militia service. It can be assumed that the State of Illinois has the constitutional power to draft conscientious objectors for war duty and to punish them for a refusal to serve as soldiers,—powers which this Court held the United States possesses in *United States v. Schwimmer*, 279 U. S. 644, and *United States v. McIntosh*, 283 U. S. 605. But that is not to say that Illinois could constitutionally use the test oath it did in this case. In the *Schwimmer* and *McIntosh* cases aliens were barred from naturalization because their then religious beliefs would bar them from bearing arms to defend the country. Dissents in both cases rested in part on the premise that religious

tests are incompatible with our constitutional guarantee of freedom of thought and religion. In the *Schwimmer* case dissent, Mr. Justice Holmes said that "if there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as to life within this country." pp. 654-655. In the *McIntosh* case dissent, Mr. Chief Justice Hughes said, "To conclude that the general oath of office is to be interpreted as disregarding the religious scruples of these citizens and as disqualifying them for office because they could not take the oath with such an interpretation would, I believe, be generally regarded as contrary not only to the specific intent of the Congress but as repugnant to the fundamental principle of representative government." p. 632. I agree with the constitutional philosophy underlying the dissents of Mr. Justice Holmes and Mr. Chief Justice Hughes.

The Illinois Constitution itself prohibits the draft of conscientious objectors except in time of war and also excepts from militia duty persons who are "exempted by the laws of the United States." It has not drafted men into the militia since 1864, and if it ever should again, no one can say that it will not, as has the Congress of the United States, exempt men who honestly entertain the views that this petitioner does. Thus the probability that Illinois would ever call the petitioner to serve in a war has little more reality than an imaginary quantity in mathematics.

I cannot agree that a state can lawfully bar from a semi-public position, a well-qualified man of good character solely because he entertains a religious belief which might prompt him at some time in the future to violate a law which has not yet been and may never be enacted. Under our Constitution men are punished for what they do or fail to do and not for what they think and believe. Freedom to think, to believe, and to worship, has too exalted a position in our country to be penalized on such an illusory basis. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 643-646.

I would reverse the decision of the State Supreme Court.

Mr. Justice DOUGLAS, Mr. Justice MURPHY, and Mr. Justice RUTLEDGE concur in this opinion.